

Van Scoy

Kurt Van Scoy

v. Van Scoy Diamond Mine of Delaware, Inc.
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<p>1 Q. Is there anything else you can think of besides 2 the right to use the name that they were paying for? 3 A. No.</p> <p>4 Q. How did your father decide where to open up a new 5 licensee or franchise?</p> <p>6 A. I don't know.</p> <p>7 Q. Would he open up two stores in the same market, 8 same area very close together?</p> <p>9 A. I don't know.</p> <p>10 Q. Did he open up two stores in the same market?</p> <p>11 A. I don't know.</p> <p>12 MR. F. PETOCK: Could you speak up a little 13 bit?</p> <p>14 THE WITNESS: I don't know.</p> <p>15 MR. F. PETOCK: I'm not sure the court 16 reporter —</p> <p>17 THE WITNESS: That's okay. No problem.</p> <p>18 Sorry.</p> <p>19 MR. PETOCK: We are going to take a break 20 for five minutes.</p> <p>21 VIDEO SPECIALIST: This ends Tape Number 1 22 of the video deposition of Kurt Van Scoy. The time is 23 10:52.</p> <p>24 (Thereupon, a short recess was had.)</p>	<p>1 opinion?</p> <p>2 A. Yes.</p> <p>3 Q. Did you have knowledge of the fact that — do you 4 have knowledge of the fact that the mark Van Scoy Diamond 5 Mine is federally registered?</p> <p>6 A. No.</p> <p>7 Q. I asked you — I will repeat the question. 8 Do you have knowledge of the fact that the 9 mark Van Scoy Diamond Mine is federally registered?</p> <p>10 A. No, until now.</p> <p>11 Q. Do you know now that the mark Van Scoy Diamond 12 Mine is federally registered?</p> <p>13 A. Yes.</p> <p>14 Q. When did you first become aware of this?</p> <p>15 A. November the 18th of 2004.</p> <p>16 Q. How did you become aware of it that day?</p> <p>17 A. From a letter from your office or your dad's 18 office.</p> <p>19 Q. What did you do after you received the cease and 20 desist letter of November 18th, 2004?</p> <p>21 A. Seeked counsel.</p> <p>22 Q. Who did you contact to be your counsel?</p> <p>23 A. It was actually in Wilmington. Someone — it was 24 just a brief encounter with counsel in Wilmington. And</p>
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<p>1 VIDEO SPECIALIST: This is Tape Number 2 of 2 the video deposition of Kurt Van Scoy. The time is 3 11:04.</p> <p>4 BY MR. PETOCK:</p> <p>5 Q. Kurt, did you speak with your attorney about any 6 of your deposition testimony during the break?</p> <p>7 A. No.</p> <p>8 Q. Okay. Getting back to your father's companies, 9 franchises or licensees, did you know that they were 10 paying to use, paying for the right to use the mark Van 11 Scoy Diamond Mine?</p> <p>12 A. I don't know.</p> <p>13 Q. Did you think that they were getting the right to 14 use the mark for free?</p> <p>15 A. I don't know. I can't answer for my father's —</p> <p>16 Q. I'm asking what you thought.</p> <p>17 A. I don't know.</p> <p>18 Q. Did you assume that they were paying for the 19 right to use the mark?</p> <p>20 A. I don't know.</p> <p>21 Q. Did you assume that your father was giving them 22 the right to use the mark as an act of charity for free?</p> <p>23 A. I don't know.</p> <p>24 Q. Was your father a good businessman in your</p>	<p>1 then I actually went to Fox Rothschild.</p> <p>2 Q. Counsel in Wilmington you said?</p> <p>3 A. Yes.</p> <p>4 Q. Did they do any work for you?</p> <p>5 A. No, just had conversation.</p> <p>6 Q. Did they produce any documents for you or 7 anything or do anything for you in that regard, give you 8 anything?</p> <p>9 A. No, not that I recall.</p> <p>10 Q. Are you aware of anyone operating a jewelry store 11 under the mark of Van Scoy Diamond Mine at this time 12 other than yourself and Wayne?</p> <p>13 A. I don't understand the question. I'm sorry.</p> <p>14 Q. Are you aware of anyone operating a Van Scoy 15 Diamond Mine jewelry store, or any other store for that 16 matter, at this time other than yourself and Wayne?</p> <p>17 A. If you are saying the question is Van Scoy 18 Diamond Mine?</p> <p>19 Q. That's correct.</p> <p>20 A. The only thing I know, in the Scranton store in 21 the newspaper it says Van Scoy Diamond -- or in the phone 22 book, not the store itself, it says Van Scoy Diamonds.</p> <p>23 Q. Okay.</p> <p>24 A. If the question to that would be if it's just</p>

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1 Wayne and I using that, as far as I know, I would say,
 2 yeah, I'm aware of that, just him and I.
 3 Q. Just you and him?
 4 A. Correct.
 5 Q. Are you aware of anyone operating a jewelry store
 6 under any mark containing the word "Van Scoy" other than
 7 yourself and Wayne?
 8 A. Yes, I am.
 9 Q. Could you go through everyone that you are aware,
 10 please, using any --
 11 A. Variation?
 12 Q. Well, the "Van Scoy" in connection with a jewelry
 13 store.
 14 A. Charlotte, North Carolina.
 15 Q. What do you know about the Charlotte,
 16 North Carolina, store?
 17 A. I just know that there is a store down there with
 18 the name.
 19 Q. Do you know if that was one of your father's
 20 franchisees or licensees at one point or whether that
 21 store -- answer the first question.
 22 A. What was the question?
 23 Q. Was that one of your father's licensees at some
 24 point? Did your father have a licensee in Charlotte?

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1 A. I don't know.
 2 Q. Do you know anything about the Charlotte store?
 3 Have you contacted the Charlotte store?
 4 A. No.
 5 Q. What other stores or what other people are using
 6 the name Van Scoy Diamond Mine or just Van Scoy?
 7 A. North Carolina, Reading, Lancaster. I believe
 8 there is Allentown, Scranton. That's it. Wilkes-Barre
 9 store.
 10 Q. Is that it?
 11 A. And Erie. I'm sorry, Erie.
 12 Q. Is that it?
 13 A. To my knowledge, yes.
 14 Q. What do you know about the North Carolina store?
 15 Do you know what mark they are using?
 16 A. I think on the website it says Van Scoy Jewelers
 17 if I'm not mistaken.
 18 Q. Do you know who would own that store?
 19 A. I believe his name is Bob Cook.
 20 Q. Have you spoken to Bob Cook?
 21 A. No, I haven't.
 22 Q. Do you know if anyone has spoken to Bob Cook
 23 recently?
 24 A. No, I don't know.

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1 Q. What can you tell me about the Reading store?
 2 A. I don't understand the question.
 3 Q. You had mentioned that there was a store in
 4 Reading using Van Scoy in connection with jewelry
 5 services.
 6 A. Correct.
 7 Q. Do you know anything more than that?
 8 A. No.
 9 Q. Was the Reading, did your father ever have a
 10 store in Reading, own a store in Reading?
 11 A. Him personally own a store, not that I know.
 12 Q. Did he ever have a licensee in Reading?
 13 A. I don't know. I don't know that.
 14 Q. Did you ever travel to any store, a Van Scoy
 15 Diamond Mine store when you were working for the company
 16 in Reading?
 17 A. No.
 18 Q. So, to your knowledge, there was no Van Scoy
 19 Diamond Mine --
 20 A. You asked me if I traveled with him to the
 21 Reading store. No, I did not.
 22 Q. Have you ever been to a jewelry store in Reading?
 23 Let me ask you that.
 24 A. No. Not that I remember, no.

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1 Q. Were you ever aware that there was any sort of
 2 jewelry store in Reading using the name Van Scoy in
 3 connection with diamonds or jewelry?
 4 A. Yes.
 5 Q. When did you first become aware of this?
 6 A. On the website actually.
 7 Q. When did you first become aware of it?
 8 A. I don't know when exactly. I don't remember.
 9 Q. Approximately.
 10 A. I don't know really.
 11 Q. In the past year?
 12 A. No, it's longer than that I would have to say.
 13 When exactly, I'm not really sure.
 14 Q. But it was through a website that you first
 15 became aware of a jewelry store --
 16 A. That the store was operating there in Reading,
 17 yes. I know there was stores. My father did dealings
 18 with gentlemen in that area. And that's all I know.
 19 Q. Do you know what name they are using in Reading?
 20 A. It's -- Van Scoy?
 21 Q. Is that a guess?
 22 A. On this website it says Van Scoy.
 23 Q. You mentioned that there is a jewelry store that
 24 you are aware of in Lancaster using the name, using Van

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1 Scoy in connection with a jewelry store.
 2 A. There was a store, yes, in Lancaster. If – from
 3 what I gather, yeah, there is a store in Lancaster that's
 4 using Van Scoy.
 5 Q. Where did you receive that information?
 6 A. Someone told me actually. Who I don't – someone
 7 told me, if it was a customer or not or something.
 8 Q. Did your father have a store in Lancaster? Did
 9 he ever own a store in Lancaster?
 10 A. I don't know that.
 11 Q. Do you know what mark the store in Lancaster is
 12 using?
 13 A. Exact words no, I do not know.
 14 Q. Do you have any idea?
 15 A. Van Scoy.
 16 Q. You mentioned that there is a store in Allentown
 17 presently using Van Scoy in connection with a jewelry
 18 store. Do you know what mark the store in Allentown is
 19 using?
 20 A. I do not know exactly.
 21 Q. Do you have any idea?
 22 MR. QUINN: I think you are asking the
 23 witness to speculate.
 24 MR. F. PETOCK: You can still answer the

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1 Q. Do you know if you are planning on calling him as
 2 a witness in this trial?
 3 A. I don't know that.
 4 Q. Have you spoke with anyone about possibly calling
 5 him as a witness besides your attorney?
 6 A. I don't know that, no.
 7 Q. Do you know if Mark Mower owns jewelry stores
 8 other than the one in Allentown?
 9 A. I don't know that.
 10 Q. What did you say to Mark Mower --
 11 A. I don't recall.
 12 Q. – in your conversation?
 13 A. I don't recall.
 14 Q. Did you call him about, because you were being
 15 sued?
 16 A. Yes.
 17 Q. Why did you call Mark Mower because you were
 18 being sued?
 19 A. Because he's – actually, to be honest with you,
 20 I just told him the situation. And he was in disbelief.
 21 Q. Did you call any other person that's operating a
 22 store using some variation of the name Van Scoy?
 23 A. I don't understand the question.
 24 Q. Did you call anyone besides Mark Mower? Did you

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1 question.
 2 THE WITNESS: I don't know.
 3 BY MR. PETOCK:
 4 Q. But, to your knowledge, it does have the word
 5 "Van Scoy" in its name.
 6 MR. QUINN: That's not a question.
 7 Q. To your knowledge, does it still have the word
 8 "Van Scoy" in the name?
 9 A. Yes.
 10 Q. Do you know who owns the store in Allentown?
 11 A. I believe it's Mark Mower.
 12 Q. What can you tell me about Mark Mower?
 13 A. He did dealings with my father and was another
 14 partner of his from way back. And that's all I really
 15 know about Mark and the Allentown store.
 16 Q. When was the last time you spoke with Mark Mower?
 17 A. Oh, God. I think about three months ago.
 18 Q. What did you speak with him about three months
 19 ago?
 20 A. The situation, what's going on with the suit.
 21 Q. Could you tell me specifically what you spoke to
 22 him about?
 23 A. I don't recall. We covered one thing to this and
 24 how's business and all that.

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1 call Bob Cook, for example?
 2 A. No.
 3 Q. And you didn't call the North Carolina store?
 4 A. No.
 5 Q. You didn't call the Reading store?
 6 A. No.
 7 Q. You didn't call the Lancaster store?
 8 A. No.
 9 Q. What did Mark Mower say to you?
 10 A. I don't recall really.
 11 Q. Did you call Mark Mower because your attorney
 12 asked you to?
 13 A. No.
 14 Q. Besides three months ago -- did Mark Mower refer
 15 you the name of Charlie Quinn?
 16 A. I don't recall that to be honest with you.
 17 Q. How did you find out about Charlie Quinn?
 18 A. Actually, a friend of mine is an attorney as
 19 well. And we just went through a list. And this was one
 20 that he recommended.
 21 Q. Is it just coincidence that Charlie Quinn also
 22 represented Mark Mower in the past?
 23 A. Actually, I was surprised. Yes.
 24 Q. How did you find out about that?

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1 A. I don't understand the question.
 2 Q. How did you find out that Charlie Quinn
 3 represented Mark Mower in the past?
 4 A. Actually, when I spoke to Mark Mower and he
 5 mentioned the same name as what I had mentioned.
 6 Q. When did this conversation take place?
 7 A. Oh, my God. This is going back four months,
 8 three months.
 9 Q. This was the same conversation we have been
 10 talking about all along?
 11 A. Correct.
 12 Q. Okay. So you just remember that you mentioned
 13 Charlie Quinn's name. What else do you remember?
 14 A. That's it. That's when you actually pointed it
 15 out.
 16 Q. You can't remember -- can you remember anything
 17 else about what you and Mark Mower spoke about?
 18 A. No.
 19 Q. What he said to you?
 20 A. (Witness indicating.)
 21 Q. Are you and Mark Mower friends?
 22 A. Not friends -- no.
 23 Q. Before the conversation three or four months ago,
 24 when was the last time you two had spoken?

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1 A. I don't recall. Years.
 2 Q. Do you know anything about why Mr. Quinn
 3 represented Mark Mower?
 4 A. No, I don't. I mean, it was personal dealings
 5 with my father, nothing to do with me.
 6 Q. So Charlie Quinn represented -- did Charlie Quinn
 7 represent Mark Mower against your father?
 8 A. I don't know that.
 9 Q. Was Mark Mower one of your father's licensees or
 10 franchisees?
 11 A. He was a business acquaintance with my father.
 12 That's all I know.
 13 Q. Were you aware if Mark Mower was paying your
 14 father royalties to use the mark Van Scoy Diamond Mine?
 15 A. I don't know that.
 16 Q. You don't even -- do you know whether Mark Mower
 17 was a franchisee of your father?
 18 A. I know he had the name. I know he had a jewelry
 19 store, Van Scoy. Sure.
 20 Q. So did you know he was a franchisee or licensee
 21 of your father?
 22 MR. QUINN: Asked and answered. Objection.
 23 Q. Did your father --
 24 MR. F. PETOCK: He can answer it again.

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1 MR. QUINN: He can ask it then how many
 2 times?
 3 MR. F. PETOCK: The fact that your attorney
 4 objects to the question doesn't mean you don't answer it.
 5 You still answer it.
 6 MR. QUINN: I want to see the authority for
 7 the proposition that the attorney can ask the same
 8 question multiple times in the same deposition session.
 9 Do you have authority on that?
 10 MR. F. PETOCK: You're obstructing the
 11 deposition.
 12 MR. QUINN: Do you have authority on that?
 13 MR. F. PETOCK: Continue with the
 14 deposition. It's not the same question.
 15 MR. QUINN: It is the same question and I
 16 want to see the authority for it.
 17 MR. F. PETOCK: You are required to answer
 18 the question unless your attorney instructs you not to
 19 answer the question.
 20 MR. QUINN: If you believe the question has
 21 been asked and answered, I leave it up to you. But if I
 22 were you --
 23 THE WITNESS: I think I already answered it.
 24 MR. F. PETOCK: You are coaching the

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1 witness.
 2 MR. QUINN: I'm giving the witness a piece
 3 of legal advice that you seem to suggest that I am
 4 improperly doing so. And I'm asking you to give me the
 5 authority for that. Where is the case?
 6 MR. PETOCK: Was he given the case?
 7 MR. F. PETOCK: We have case.
 8 By the way, while you have disrupted the
 9 deposition so badly and you're obstructing this
 10 deposition, I give you three cases here that stand for
 11 the proposition that specifically rule that in Delaware,
 12 the District Court in Delaware, you are not allowed to
 13 advise your client about any testimony that's been given
 14 or you are anticipating to be given during the
 15 deposition. And these are the Turks Beckers, Inc., case,
 16 the Dutchman versus Beneficial Corporation case and ML
 17 Lee Acquisitions case. Let's continue the deposition.
 18 BY MR. PETOCK:
 19 Q. Do you know what mark -- you had said that there
 20 is a jewelry store using Van Scoy in connection with
 21 jewelry services in Scranton?
 22 A. Correct.
 23 Q. What mark are they using?
 24 A. It's Van Scoy Diamonds from what I'm aware of.

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<p style="text-align: center;">Page 62</p> <p>1 Q. That's Rick and Pam Sendrick's store? 2 A. Correct. Excuse me. Correct. 3 Q. What about the store in Erie? 4 A. I'm not sure on that. The store fronts, I don't 5 know that. 6 Q. You are not sure what mark that store in Erie 7 uses? 8 A. I do not know. 9 Q. Who owns that store? Do you know? 10 A. I have no idea. 11 Q. Is it any of your brothers or sisters? 12 A. No, my brother -- I don't -- my brother runs it. 13 That's all I know. 14 Q. Your brother runs the store? 15 A. Yes. 16 Q. Tony runs the store and you are not sure whether 17 he owns it or not? 18 A. That's correct. 19 Q. What do you know about Tony -- has Tony ever 20 owned a Van Scoy Diamond Mine that you are aware of? 21 A. In the past, yeah. He had five stores, if I'm 22 not mistaken, four or five stores. 23 Q. Were any of those in Erie? 24 A. Yes.</p>	<p style="text-align: center;">Page 64</p> <p>1 A. I don't know that. 2 Q. Did you ever visit the Delaware store when there 3 was a franchisee there? 4 A. No. 5 Q. Did your father? 6 A. I don't know that. I'm not my father. 7 Q. Did your father ever personally operate and own a 8 Van Scoy Diamond Mine in Delaware? 9 A. Yes, he did. 10 Q. Where was that store located? 11 A. Kirkwood Highway, Astro Shopping Centre. And 12 then he relocated to the location to where we are at 13 right now, 1117 Churchmans Road, Newark, Delaware. 14 Q. What years was the store operated and owned by 15 your father in the Astro Shopping Centre? 16 A. I don't know that. 17 Q. Do you know what year the store your father owned 18 in Delaware that is located at 1117 Churchmans Road in 19 the Churchmans Plaza was opened by your father? 20 A. I don't know that. 21 Q. Approximately. 22 A. I don't know that. 23 Q. Did you ever have any dealings with your father's 24 Delaware store?</p>
<p style="text-align: center;">Page 63</p> <p>1 Q. Do you know if it was in the same location that 2 he's running the store now? 3 A. I don't know that. I've never been there. 4 Q. Do you know if anyone ever gave him permission to 5 use the mark Van Scoy Diamond Mine? 6 A. He's been in business well over 25 years. 7 Q. Is your answer you don't know? 8 A. I don't know. 9 Q. Your father's company, did it ever have any Van 10 Scoy Diamond Mine franchisee or licensee in Delaware? 11 A. I didn't understand your question. 12 Q. Did your father's company ever have a Van Scoy 13 Diamond Mine franchisee or licensee in Delaware, in the 14 State of Delaware? 15 A. From what I'm aware of, yes, he did. 16 Q. Do you know who the franchisee or licensee was? 17 A. Actually, no, I don't. 18 Q. Do you remember what years he had that store? 19 A. No, I don't. 20 Q. Approximately. 21 A. I have no idea. 22 Q. Do you know if Van Scoy Diamond Mine was 23 advertised in Delaware during that time, the time in 24 which there was a franchisee there?</p>	<p style="text-align: center;">Page 65</p> <p>1 A. I don't understand the question. 2 Q. Did you ever visit it? 3 A. I don't understand the question. 4 Q. When your father owned the Delaware store in the 5 Churchmans Plaza, had you ever been there? 6 A. I have. 7 Q. When had you been there? 8 A. When we had sales, half price sales. When 9 exactly, I can't pinpoint that. 10 Q. So from time to time you worked in your father's 11 Churchmans Plaza store? 12 A. For the weekend we all did, yeah. 13 Q. Do you know how many years your father had the 14 Churchmans Plaza store open? 15 A. I don't know that. You would have to talk to the 16 landlord. 17 Q. Was it more than one year? 18 A. Yes. 19 Q. Was it more than two years? 20 A. From what I gather -- I don't know. How many 21 years, I really don't know. 22 Q. Was it more than two years? 23 A. I don't know that. 24 Q. Do you remember approximately how many times you</p>

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<p>1 worked in his store? 2 A. No, I really don't. 3 Q. Do you know if you worked in his store over the 4 course of more than one year? 5 A. I don't understand the question. What store? 6 Q. The Churchmans, the store your father owned in 7 the Churchmans Plaza, the same store you own right now. 8 A. Right, correct. 9 Q. You don't remember whether or not your father had 10 owned that store for more than one or two years.</p> <p>11 MR. QUINN: Objection. That's not a 12 question.</p> <p>13 BY MR. PETOCK:</p> <p>14 Q. Do you remember whether your father owned that 15 store for more than one year? 16 A. More than one year, yes. 17 Q. More than two years? 18 A. I really don't know the length of time. I mean, 19 more than one year, yes, to answer the question. 20 Q. Do you currently operate a Van Scoy Diamond Mine 21 in the same location as your father's store? 22 A. Yes, I do. 23 Q. When did you open that store? 24 A. November 12th, 1994.</p>	<p>1 That's where he had the showcases. 2 Q. You said your father gave you that sign. 3 A. Yes, he did. 4 Q. Did he drive it down to Wilmington to give it to 5 you? 6 A. He actually helped me load it up into our U-Haul. 7 Q. In Wilkes-Barre? 8 A. Correct. And my father gave me the safe. 9 Q. Was that also in the warehouse? 10 A. No. 11 Q. Where was the safe? 12 A. In Mundy Street. 13 Q. What did he say to you when he gave you the safe? 14 A. Good luck to you, I love you and I'm very proud 15 of you. 16 Q. Why did you choose the location in Churchmans 17 Plaza to open a Van Scoy Diamond Mine? 18 A. I don't know. Just a location and there it is 19 and open up. 20 Q. What about the location? Was it easier to open 21 in a store where a Van Scoy, in a location where a Van 22 Scoy Diamond Mine already existed? 23 MR. QUINN: Objection. That's two 24 questions.</p>
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<p>1 Q. Was your father's store still operating there 2 when you opened your store on November 12th, 1994? 3 A. No, it was not. It was closed for a 4 year-and-a-half prior to that. 5 Q. So you do know when your father's store closed; 6 is that correct? 7 A. When it closed, from what my landlord said, it 8 was vacant for 16 months. I'm going off my landlord. 9 Q. When you opened your store, were any remnants of 10 your father's store still there? 11 A. The wallpaper, lighting fixtures. And what else? 12 That's about it, and the alarm system. 13 Q. Safe? 14 A. No, the safe I brought down from the Wilkes-Barre 15 store. 16 Q. Cases? 17 A. No, none of that was left there. 18 Q. Sign? 19 A. The sign I got from my father. 20 Q. Was the sign already there? 21 A. No, it was actually in the warehouse, my father's 22 warehouse. 23 Q. Where is your father's warehouse located? 24 A. Frederick Street in Wilkes-Barre at the time.</p>	<p>1 BY MR. PETOCK: 2 Q. I will rephrase the question. Was it easier to 3 open your Van Scoy Diamond Mine in a location where your 4 father had for several years already operated a Van Scoy 5 Diamond Mine? 6 A. After it was closed 16 months, and that was the 7 location that we reopened, yes. 8 Q. Is your answer yes? 9 A. Yes. 10 Q. You originally opened using the name Van Scoy 11 Diamond Mine, correct? 12 A. That's correct, Van Scoy Diamond Mine of 13 Delaware, Incorporated. 14 Q. When you originally opened, were you using the 15 name Van Scoy Diamond Mine or Van Scoy Diamond Mine of 16 Delaware, Incorporated? 17 A. I don't understand the question. 18 Q. When you originally opened your store, were you 19 using the name Van Scoy Diamond Mine or were you using 20 the name Van Scoy Diamond Mine of Delaware, Incorporated? 21 A. I still don't understand the question. 22 Q. What don't you understand about the question? 23 A. If you are talking outside the store or — you 24 know what I mean? What's outside, the marquee outside?</p>

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<p>Page 70</p> <p>1 Q. Yeah. 2 A. Okay. 3 Q. Okay. What was outside the store? 4 A. Van Scoy Diamond Mine. 5 Q. What about, what did you use on your sales 6 receipts? 7 A. Van Scoy Diamond Mine of Delaware, Incorporated. 8 Q. Did you use those when you first opened your 9 store? 10 A. When we first opened up, actually, no. My father 11 gave me sales pads, actually, from the Gateway Shopping 12 Center store and also the 154 Mundy Street store. 13 Q. Did they just say Van Scoy Diamond Mine on them? 14 A. I did and then we had to put a sticker over for 15 our new address. My father was trying to save me money. 16 Q. Did you inform Wayne, in any way, that you were 17 opening a Van Scoy Diamond Mine in Delaware? 18 A. He clearly knew. 19 Q. How do you know that he clearly knew? 20 A. I remember specifically when we were trying to 21 move the safe out of the Wilkes-Barre store, my brother 22 Kenny and him sat on a Lazy Boy chair, and his exact 23 quotes as my father and I — my father was helping me 24 move the safe. And they just sat there. Wayne said to</p>	<p>Page 72</p> <p>1 Q. Did you receive a lot of complaints like that? 2 A. Quite a few, yes. 3 Q. Approximately how many? 4 A. The number off the top of my head, I can't 5 recall. 6 Q. You have quite a few customers now that were also 7 customers of your father's Van Scoy Diamond Mine; is that 8 correct? 9 A. They've actually — no. I would have to say not 10 many, no, not many at all actually. 11 Q. Well, you have people coming in that were very 12 upset that they had bought diamonds at your store, at 13 your father's store. They had bought jewelry at your 14 father's store and then he closed down. 15 A. Yes. 16 Q. But now you are testifying that there weren't, 17 they weren't the same customers? 18 A. People that came back, you know, just, geez, you 19 guys have left and, you know, you are back here. Are you 20 here for another week and going again? That's basically 21 what they were stating, not in goodwill. 22 Q. So have you had repeat customers? Have you had 23 customers that were your father's customers and now are 24 your customers?</p>
<p>Page 71</p> <p>1 my brother Kenny, quote, unquote, Kenny, I give him two 2 months. No, I give him three months and he's going to be 3 in so much debt he won't even know what happened to him, 4 quote, unquote. 5 Q. Who selected the name Van Scoy Diamond Mine for 6 your store? 7 A. My father and I. 8 Q. Why was the name Van Scoy Diamond Mine selected? 9 A. Because that's our family business. 10 Q. Did the name have goodwill attached to it? 11 A. The store was closed for 15 months, 16 months 12 roughly, somewhere around there. That's what they said. 13 The store was closed and people actually weren't very 14 happy. 15 Q. Who wasn't happy? 16 A. Customers from the area that purchased rings in 17 the past. 18 Q. Where did you receive that information? 19 A. From customers actually coming to the 20 Wilkes-Barre store from driving up and weren't very 21 happy. And also the fact after I opened the store, 22 customers came in and, you here today, are you going to 23 be here next week? So I had to put up with that for 24 probably about two or three years.</p>	<p>Page 73</p> <p>1 A. I don't recall that. I really — 2 Q. Did you talk to an attorney when you decided to 3 open up a jewelry store under the name Van Scoy Diamond 4 Mine about whether it was okay to use the mark Van Scoy 5 Diamond Mine? 6 A. No, I did not. 7 Q. Did you speak with anyone? 8 A. No, I did not. 9 Q. Were there any other names considered for your 10 store? 11 A. No. 12 Q. Does the name Van Scoy Diamonds have the same 13 meaning to the public as Van Scoy Diamond Mine in your 14 opinion? 15 A. I don't know. Van Scoy Diamond and Van Scoy 16 Diamond Mine, I don't know. 17 Q. Do you have an opinion as to whether they are the 18 same mark? 19 A. I don't know that. 20 Q. When did you decide to start using the name Van 21 Scoy Diamond Mine of Delaware? 22 A. From the day I opened the store because that's 23 when my father actually gave me the name. 24 Q. He didn't give you the name Van Scoy Diamond</p>

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1 Mine; he gave you the name Van Scoy Diamond Mine of
 2 Delaware?
 3 A. He gave me the name Van Scoy Diamond Mine. And
 4 what I did, we just incorporated Van Scoy Diamond Mine of
 5 Delaware, Incorporated. That's what he recommended me to
 6 do.
 7 Q. Why did he recommend you to do that?
 8 A. If things didn't work out for me, I guess, in a
 9 legal standpoint. I guess they can't, you know,
 10 certainly come after you. I'm not up on that.
 11 Q. If who would come after you?
 12 A. If the store failed, landlord or whatever the
 13 case may be. I don't know what his thought was with
 14 that. I don't know. But that's what he recommended me
 15 to do.
 16 Q. What difference would it make if you were using
 17 the mark Van Scoy Diamond Mine or Van Scoy Diamond Mine
 18 of Delaware if the store failed and someone tried to come
 19 after you?
 20 A. I don't understand the question.
 21 Q. I'm not sure I understood your answer to the
 22 original question. You said that your father recommended
 23 that you use the mark Van Scoy Diamond Mine of Delaware
 24 rather Van Scoy Diamond Mine; is that correct?

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1 A. No. He said to incorporate so you are actually a
 2 president as opposed to a sole proprietor, he said just
 3 to go under in the corporation. And that's what he
 4 recommended to do. He said you should just go Van Scoy
 5 Diamond Mine of Delaware, Incorporated, which in fact
 6 that's what I did.
 7 Q. Did he tell you that's what he did also?
 8 A. No, that's what he recommended me to do.
 9 Q. Is your testimony that from the very beginning
 10 you are using both Van Scoy Diamond Mine and Van Scoy
 11 Diamond Mine of Delaware as your marks?
 12 A. I don't follow the question.
 13 Q. Was there ever a time where you decided rather
 14 than using Van Scoy Diamond Mine as your mark you would
 15 use Van Scoy Diamond Mine of Delaware?
 16 A. No. We used Van Scoy Diamond Mine out front of
 17 the store.
 18 Q. So is that what you used, is that what your mark
 19 is?
 20 A. It's Van Scoy Diamond Mine of Delaware,
 21 Incorporated. And the sign that my father gave me, it's
 22 Van Scoy Diamond Mine. So on the paperwork, it's Van
 23 Scoy Diamond Mine of Delaware.
 24 Q. Right. What is the name you tell customers that

1 you use?
 2 A. Van Scoy Diamond Mine.
 3 Q. Is that how you answer the phone?
 4 A. Good afternoon, Van Scoy's.
 5 Q. How about on your bags?
 6 A. Van Scoy Diamond Mine.
 7 Q. Jewelry boxes?
 8 A. Van Scoy Diamond Mine.
 9 Q. Where else is Van Scoy Diamond Mine used in the
 10 store?
 11 A. That's it, just in the sign, Van Scoy Diamond
 12 Mine. That's what was given to me.
 13 MR. PETOCK: I would like to have this
 14 marked as the next exhibit, please.
 15 (Van Scoy Deposition Exhibit No. 5,
 16 Warranty, was marked for identification.)
 17 BY MR. PETOCK:
 18 Q. What is this, Kurt?
 19 A. That's a warranty.
 20 Q. Do you give this warranty to your customers?
 21 A. I do.
 22 Q. How long have you been giving this particular
 23 warranty to your customers?
 24 A. As far as I can remember.

20 (Pages 74 to 77)

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1 know my mom was in the hospital. He'd stop by.
 2 Q. When was the first time he visited your store?
 3 A. Actually, that was the opening.
 4 Q. On November 14th?
 5 A. 12th.
 6 Q. November 12th, 2004?
 7 A. 1994.
 8 Q. 1994. He was there at the opening?
 9 A. Yes.
 10 Q. Do you remember what he was doing there at the
 11 opening?
 12 A. Yeah. He was, actually, giving everybody
 13 pointers and also waiting on customers.
 14 MR. PETOCK: Let's mark this as the next
 15 exhibit, please.
 16 (Van Scoy Deposition Exhibit No. 6,
 17 Valentine's Ad, was marked for identification.)
 18 BY MR. PETOCK:
 19 Q. What is this?
 20 A. What is this? This is a --
 21 Q. This is, by the way, just for the record, this is
 22 Exhibit Number 6. Can you tell me what it is, please?
 23 A. Yes. This is, actually, an ad that my father has
 24 sent to me to actually run for a, to run an ad,

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1 Q. If you weren't given permission by your father to
 2 use the mark --
 3 A. If I was given permission --
 4 Q. If you were not, if you were not given permission
 5 to use the mark, would your use have been infringement,
 6 your using the mark been infringement?
 7 A. Not to my knowledge.
 8 Q. If you didn't have any permission to use the mark
 9 Van Scoy Diamond Mine right now, do you think you would
 10 be infringing?
 11 MR. QUINN: Objection. The question has
 12 been asked and answered.
 13 MR. PETOCK: No, it was different, Charlie.
 14 MR. QUINN: Different in one percent of the
 15 words perhaps.
 16 MR. PETOCK: It was a completely different
 17 question, Charlie.
 18 MR. QUINN: Objection stands.
 19 MR. F. PETOCK: Answer the question.
 20 THE WITNESS: Repeat it again.
 21 MR. F. PETOCK: Read the question back,
 22 please.
 23 (Thereupon, the reporter read back the
 24 pending question.)

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1 obviously, for a Valentine's ad.
 2 Q. It says Vestil Plaza. Your store is not located
 3 at Vestil Plaza; is it?
 4 A. No. That's, obviously, where you actually would
 5 change the name and put the location of where you are at.
 6 Q. And when was this sent to you?
 7 A. It was sent to me -- let's see here. Was it
 8 September 18th, 1997?
 9 Q. Thank you.
 10 A. Sure.
 11 Q. You said you had permission to use the mark; is
 12 that correct?
 13 A. To use the name Van Scoy Diamond Mine, yes.
 14 Q. Were you licensed?
 15 A. I don't understand the question.
 16 Q. If not for the permission given by your father to
 17 use the mark, do you think that that would have been
 18 trademark infringement, your using the mark?
 19 A. Say that again.
 20 Q. If it weren't for the permission that you say
 21 that you got from your father to use the mark, would your
 22 use of the mark have been infringement?
 23 A. I don't understand it. I don't understand the
 24 question.

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1 THE WITNESS: I don't know.
 2 MR. PETOCK: I would like to have this
 3 marked as Number 7, please.
 4 (Van Scoy Deposition Exhibit No. 7, Sales
 5 Receipts, was marked for identification.)
 6 BY MR. PETOCK:
 7 Q. Kurt, at some point you started blacking out the
 8 name "Mine" from your sales receipts; is that correct?
 9 A. Actually, one of the girls did.
 10 Q. Did you ask -- one of the girls, are you
 11 referring to one of your employees?
 12 A. Yeah, correct.
 13 Q. Did you ask her to do that?
 14 A. Actually, no, I don't recall doing that. I know
 15 they -- we were actually away when the paper was served
 16 to us, if you will, for the suit. And the one girl, I
 17 guess, took it upon herself to do that. And I said there
 18 is no real need to do that.
 19 Q. What was her name?
 20 A. Actually, I'm not sure which one it was to be
 21 honest with you. I'm not sure.
 22 Q. Name all of the girls in your office that are
 23 employees of yours.
 24 A. Lori McMichael, Sands Shoemaker, Karen Vale,

21 (Pages 78 to 81)

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- 1 Annette D'Angelo, Megan Rump.
 2 Q. Who would be the person most likely to tell me
 3 who blacked out this word out of those names you just
 4 listed if I wanted to depose one of them?
 5 A. To be honest with you, we were gone away at this
 6 time. We were on vacation, actually.
 7 Q. Where were you on vacation when these got blacked
 8 out?
 9 A. Where were we? In the Caribbean, I believe.
 10 Q. Do you know the first sales receipt that, date
 11 wise, the date of the first sales receipt that was
 12 blacked out, the word "Mine" was blacked out?
 13 A. No, I do not, actually, no.
 14 Q. Although they were blacked out, you continued to
 15 use the blacked out --
 16 A. No. Obviously, it showed -- as soon as she went
 17 through one sales receipt, if I'm not mistaken, and I
 18 told them there is no need to do that. And, obviously,
 19 it went back to the way it was.
 20 Q. Were you on vacation from January 15th until
 21 March 3rd?
 22 A. No.
 23 Q. Why did you continue to use sales receipts with
 24 the word "Mine" blacked out of the sales receipt from at

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- 1 least January 15th to March 1st, 2005?
 2 A. This is just -- I mean, this is very few people.
 3 I mean, obviously, it was one sales pad that they were,
 4 obviously, just using until I got back and find out
 5 what's going on.
 6 MR. PETOCK: We would ask that all of the
 7 sales receipts from this period are produced.
 8 MR. QUINN: Define the period, please.
 9 MR. PETOCK: Well, I'm going to ask him from
 10 the cease and desist letter until at least 3/1/2005.
 11 BY MR. PETOCK:
 12 Q. Do you know why your employees decided to black
 13 out the word "Mine"?"
 14 A. They actually saw on a thing, on the letter,
 15 actually, when we got it is just stating that we were
 16 being sued for using the name Van Scoy Diamond Mine. And
 17 it was a sheriff that came and handled the, handed the
 18 paper over. And it wasn't in an envelope or anything.
 19 It just stated for the name. So they just put it on
 20 their own -- she just scratched it out until we got back
 21 to find out what was going on.
 22 Q. Who would be the supervisor that would have the
 23 capacity to make a decision like that while you were away
 24 out of those names?

- 1 A. There is Lori McMichael was the manager. But,
 2 really, it's -- the way we operate, it's not just kind of
 3 one -- it won't be no bigger than the other one and all
 4 that. You know, we just kind of work as a team.
 5 Q. So you were away when you got this November --
 6 A. The 18th I was away, yes, I was.
 7 Q. Do you remember when you got back?
 8 A. Yeah. It was actually about two days later,
 9 three days later from the original letter.
 10 Q. From the original letter which is --
 11 A. The one from November the 18th.
 12 Q. -- November the 18th?
 13 A. Correct.
 14 Q. Do you remember what day of the week it was you
 15 got back from your vacation?
 16 A. I think it was that Monday. We went hunting. It
 17 was Monday, the first day of hunting for Pennsylvania.
 18 Q. And when you got back, the word "Mine" had
 19 already been blacked out from these sales receipts; is
 20 that correct?
 21 A. I don't think so, no. If I'm not mistaken.
 22 That's why I said, this is, I have to seek counsel to
 23 really see exactly what's going on with this.
 24 Q. You need to do what?

- 1 A. To seek counsel, to see an attorney to see what's
 2 exactly going on. Because as far as I was concerned,
 3 until the November 18th of 2004, I was not aware of any
 4 point at all that there was any trademark of Van Scoy
 5 Diamond Mine after the bankruptcy.
 6 Q. But when you got back from your vacation on that
 7 Sunday or Monday, hunting season, the word "Mine" had
 8 already been blacked out; is that correct?
 9 A. Not that I know of.
 10 Q. So do you believe it happened sometime after you
 11 got back?
 12 A. From what I remember, I think it was when we were
 13 away and then we had the papers actually served.
 14 Q. So you were back and one of your employees
 15 blacked out the word "Mine" from your sales receipts
 16 without even asking you; they could have asked you?
 17 A. To be honest with you, I really don't know. I
 18 don't recall, really, when this all first really took
 19 place.
 20 Q. Your father advertised Van Scoy Diamond Mine in
 21 connection with NASCAR, correct?
 22 A. 25 years ago, yes.
 23 Q. NASCAR is very popular in Delaware; would you
 24 agree with that?

22 (Pages 82 to 85)

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- 1 A. In the last five years, yeah.
 2 Q. Have you ever advertised in connection with
 3 NASCAR?
 4 A. No.
 5 Q. Have you ever had TV commercials or TV spots
 6 during any of the NASCAR races?
 7 A. No.

8 MR. PETOCK: Let's take another break.

9 VIDEO SPECIALIST: This ends Tape Number 2
 10 of the video deposition of Mr. Van Scoy. The time is
 11 11:56.

12 (Thereupon, a short recess was had.)

13 VIDEO SPECIALIST: This is Tape Number 3 of
 14 the video deposition of Kurt Van Scoy. The time is
 15 12:07.

16 BY MR. PETOCK:

17 Q. Kurt, did you consult with your attorney during
 18 the break about any of your testimony given or that you
 19 expect to give today?

20 A. No.

21 Q. Where do the majority of your customers come
 22 from?

23 A. I don't know that.

24 Q. Do the majority of your customers come from the

1 Q. Would you think the majority of your customers
 2 would come from the area in which you advertise?

3 A. Yes.

4 Q. And that's why you advertise in that area,
 5 because that how far people would come to a jewelry
 6 store?

7 A. Yes.

8 Q. On the website of vanscoydiamondmine.com and the
 9 website of Van Scoy Diamond Mine of Delaware, you state
 10 that you have been in business for over 70 years serving
 11 customers. Could you explain that statement?

12 A. It's, actually, it's combined through with my
 13 father, family and my personal business combined.

14 Q. So when you say 70 years, you are also talking
 15 about the goodwill of your father that was established in
 16 the --

17 A. Through working with my father and the family
 18 together.

19 Q. You haven't been working for 70 years, correct?

20 A. No.

21 Q. Where did you come up with the number 70?

22 A. If I'm not mistaken, it says over 70 years.

23 Q. That's correct.

24 A. I'm 39 years old. I have been 29 years myself.

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- 1 Newark area?
 2 A. I don't know that.
 3 Q. Is it general practice for you to ask your
 4 customers what their address is?
 5 A. Yes.
 6 Q. So where do the majority come from?
 7 MR. QUINN: Asked and answered.
 8 Q. Where do you advertise?
 9 A. Radio and TV.
 10 Q. Where in geographically?
 11 A. In Delaware.
 12 Q. All of Delaware?
 13 A. No.
 14 Q. What parts of Delaware?
 15 A. Wilmington area.
 16 Q. Newark area, do you consider Newark to be part of
 17 the Wilmington area?
 18 A. Yes.
 19 Q. Why do you only advertise in that limited area?
 20 A. Because it's within the reasonable location of,
 21 close proximity of my location for my store.
 22 Q. How far do people -- how far would a customer
 23 travel to go to a jewelry store?
 24 A. I don't know.

1 My father has been at least over 50 years in the
 2 business. So combined I think that's over 70 years.
 3 Q. On your website, you also say that you are a
 4 jeweler that has a reputation, not an image.

5 A. Correct.

6 Q. What do you mean by that?

7 A. That's reputation of honesty and low pricing and
 8 not as opposed to our competition that has a diamond in
 9 their beard.

10 Q. Are you talking about the reputation of your
 11 father's business also, the 70 years that the --

12 A. We have a reputation of doing business as honesty
 13 and low pricing and certainly quality for what we offer
 14 in the service after the sale.

15 Q. Is that Van Scoy Diamond Mine that you are
 16 referring to?

17 A. That would be on our website, yes.

18 Q. And when you say that you have a reputation for
 19 honesty and all that, you are talking about the name
 20 Van Scoy Diamond Mine?

21 A. I'm talking about our business, yes.

22 Q. At least some of the established goodwill of your
 23 store, that your store has -- by the way, do you believe
 24 that your store has goodwill, that the name you are using

23 (Pages 86 to 89)

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1 in Delaware, Van Scoy Diamond Mine in Delaware, is there 2 goodwill associated with that mark in Delaware? 3 A. I don't understand the question. 4 Q. Is there a favorable attitude of the purchasing 5 public towards the goods and services that are coming 6 from your Van Scoy Diamond Mine in Newark, Delaware? 7 A. I don't know that. 8 Q. Do you think that the public has any sort of 9 attitude towards your goods and services coming from 10 Van Scoy Diamond Mine in Newark, Delaware? 11 A. I don't know that. 12 Q. Does your store have a reputation? 13 A. Yes. 14 Q. Does it have a good reputation? 15 A. I do my best, yes. 16 Q. Do you think, in your opinion, has some of that 17 good reputation come from the efforts of your father? 18 A. I don't know that. I do what I do. 19 Q. Have you improved your store in any way since you 20 opened it? 21 A. Yes, I have. 22 Q. Could you tell me how you've improved your store? 23 A. I added two more showcases and actually extended 24 the front room, showroom.	1 moved in in 1994? 2 A. Yes. 3 Q. Have you expanded your store or your business in 4 any way since you opened it? 5 A. No. 6 Q. Do you advertise? 7 A. Yes, I do. 8 Q. When did you first start advertising? 9 A. November the 12th, 1994. 10 Q. Where do you advertise? You told me 11 geographically, but tell me the forums that you're 12 advertising. 13 A. Radio, television, paper, little bit of paper. 14 Q. Could you tell me how much you've spent on your 15 advertising? Just for the record, we asked you to 16 produce advertising expenditures for each year going back 17 to 1994. And you have not produced what we have asked 18 for. This was in the Notice of Deposition which you 19 received. We asked for -- 20 MR. PETOCK: Could you mark this as the next 21 exhibit, please? 22 (Van Scoy Deposition Exhibit No. 8, Notice 23 of Deposition Resetting Date, was marked for 24 identification.)
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1 Q. How much do you think -- when did you do that, 2 the cases, when did you add the few more cases? 3 A. Probably approximately four years, five years. 4 Q. What do you think it was more close to, four 5 years or five years? 6 A. I don't know. 7 MR. F. PETOCK: You said four or five years 8 ago? 9 THE WITNESS: Yes, sir. 10 BY MR. PETOCK: 11 Q. And you said you extended your showroom. Could 12 you be more specific on what you did to your showroom? 13 A. It was just a dividing wall and, actually, we 14 just moved that dividing wall back and we just added more 15 showcases, changed the wallpaper. 16 Q. When was it that you took, you extended your 17 showroom? 18 A. I think I answered that, about four or five years 19 ago. 20 Q. Have you done anything else to improve your 21 store? 22 A. No. 23 Q. So besides those two things that you mentioned, 24 it's substantially the same form as it was when you first	1 BY MR. PETOCK: 2 Q. Plaintiffs asked for documents sufficient to show 3 advertising expenditures by defendants for each year 4 since the store operated by Van Scoy Diamond Mine of 5 Delaware, Incorporated, in or around November of 1994 and 6 began operation to present. 7 And did you receive this Notice of 8 Deposition, Kurt? 9 A. I believe I have, yes. 10 MR. QUINN: Before you go further, let the 11 record show that defendants produced what was reasonably 12 available to them both this morning and last night when 13 copies were sent to counsel for the plaintiff. 14 BY MR. PETOCK: 15 Q. You produced your U.S. Income Tax Return for 16 2002, 2003 and 2004 to satisfy that request that we were 17 talking about; is that correct? 18 A. Yes. 19 Q. Do you have your U.S. Tax Returns going further 20 back than 2002? Do you have your -- you can answer the 21 question. 22 A. I don't know that offhand. 23 Q. How far back do you keep your records? 24 A. That's my wife's department. I really can't

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1	answer that. I don't know.	1 in summertime TV a little more than radio.
2	Q. Did your wife decide, Donna decide, was she also involved in the decision to start using the mark Van Scoy Diamond Mine?	2 Q. And are the only places you advertise radio, television and newspaper?
3		3 A. Yes.
4	A. No. It was just my, it was my father and I. My father gave me the name to use.	5 Q. How much did you advertise the year that you opened, 1994?
5	Q. Did he give your corporation the right to use the name?	6 A. I don't recall that.
6	A. He gave me the name to use. He gave me the name to use.	7 Q. Has your advertising increased dramatically at any point?
7	Q. What were your advertising expenditures for last year?	8 A. I don't understand the question.
8	A. I don't recall that.	9 Q. Has the expenditures, your advertising expenses, has there been any year where there has been a large increase from the previous year?
9	Q. Do you have your advertising expenditures for years prior to 2002 at your store?	10 A. I don't know that.
10	A. I don't know that. I can look. I don't know that right now.	11 Q. Do you know if there was an increase between 1994 and 1995?
11	Q. According to your U.S. Income Tax Return for 2002, it appears that your advertising expenditures, as you recorded on this, were 63,930. Was that the total for your advertising in that year?	12 A. I don't know that.
12	A. I would have to say so if that's my taxes. Sure.	13 Q. What about between 1995 and 1996?
13	Q. In 2003 your advertising expenditures, according to what you produced, was \$72,116; is that correct?	14 A. I don't know that.
14		15 Q. What about between 1996 and 1997?
15		16 A. I really don't know that.
16		17 Q. What about between 1997 and 1998?
17		18 A. Again, I don't know that. I can't answer that.
18		19 Q. '99 and 2000?
	Page 95	Page 97
1	A. I would have to say that's on my taxes. Sure.	1 A. I can't answer that.
2	Q. Was there any reason for the increase in advertising between 2002 and 2003?	2 Q. 2000, 2001?
3	A. Not that I recall.	3 A. I don't know.
4	Q. Did it have anything to do with inflation?	4 Q. Have you done more or less advertising this year than last year?
5	A. No, not that I recall.	5 A. To be honest, I don't know that. I don't know that.
6	Q. According to what you produced, your advertising expenditures for 2004 were \$52,270. Is that accurate for your advertising expenditures for that year?	6 Q. Last year you spent 52,270 on advertising. And you are not sure how much you spent this year?
7	A. If it's on my taxes, yes.	7 A. I really don't know.
8	Q. Was there any reason for the drop in advertising between 2003 and 2004 and between 2002 and 2004 for that matter?	8 Q. So far, obviously.
9	A. No.	9 A. Right.
10	Q. How do you decide how much advertising to do?	10 Q. If you are forced to stop using the mark now, do you think you will be prejudiced in any way?
11	A. I just feel certain weeks I want to do it and then that's it.	11 A. I don't understand that.
12	Q. Do you advertise continuously throughout the year or just at certain intervals?	12 Q. Do you think that, if you were forced to stop using the mark right now, you would be placed in a position that you think is somehow unfair?
13	A. Certain intervals.	13 A. Yes.
14	Q. And what kind of intervals?	14 Q. Could you tell me why?
15	A. I don't understand that.	15 A. My father gave me the name.
16	Q. Do you advertise only during holidays?	16 Q. Is that the only reason why you think you would be prejudiced if you were forced to stop using the mark now?
17	A. In radio wise, I do just pretty much holidays and	

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1	A. My father gave me the name and he gave me the sign for the store.	1 Q. You grew up in Wilkes-Barre, correct?
2	Q. Is that the only reason why you think you would be prejudiced?	2 A. I did, yes.
3	A. Yes.	3 Q. When you were growing up, was Van Scoy Diamond Mine well-known in Wilkes-Barre?
4	MR. F. PETOCK: Could you speak up a little bit?	4 A. We were known for a big family.
5	THE WITNESS: Yes. My father gave me the name and he gave me the sign. And, yes, that's the reason why, yes, absolutely.	5 Q. Could you please answer the question?
6	MR. F. PETOCK: Thank you.	6 A. I'm sorry. What was the question again?
7	THE WITNESS: Sure.	7 Q. The question is: When you were growing up in Wilkes-Barre, was the name Van Scoy Diamond Mine well-known in Wilkes-Barre?
8	BY MR. PETOCK:	8 A. I can't answer that. Well-known, I can't answer for somebody else. I mean, people knew that we had a jewelry store if that's what you are asking. Friends knew. Friends knew, sure.
9	Q. Do you think there is a likelihood of confusion between your store and Wayne's store?	9 Q. Not you, just there was a jewelry store known in Wilkes-Barre that went by the name of Van Scoy Diamond Mine?
10	A. I don't understand that.	10 A. There was a store in Wilkes-Barre by the name of Van Scoy Diamond Mine.
11	Q. Would the average member of the public think that there is some sort of connection between the goods and services that you offer and the goods and services that Wayne's store offers under the mark Van Scoy Diamond Mine?	11 Q. And that was well-known by the public?
12	A. I don't know that. I can't answer for a customer.	12 A. I can't answer that. I don't know. You know what I mean? There was a store, Van Scoy Diamond Mine, in Wilkes-Barre, Pennsylvania.
13	Q. Have you ever experienced a customer being confused as to your store and Wayne's store?	13 Q. Could you answer: Is the mark Wal-Mart
14	A. Not that I know of, no.	
15	Q. Has anyone ever told you that they thought there was a connection between your store and Wayne's store?	
16	A. Not that I know of.	
17	Q. Is there any connection between your store and Wayne's store?	
18	A. Not that I know of.	
19	Q. Does Van Scoy Diamond Mine have significance in Wilkes-Barre, PA?	
20	A. I don't know that. I can't answer for his store.	
21	Q. Do members of the purchasing public associate the mark Van Scoy Diamond Mine with a jewelry store in Wilkes-Barre?	
22	A. I don't know that.	
23	Q. Does the mark Van Scoy Diamond Mine have significance in Newark, Delaware?	
24	A. Yes.	
25	Q. Is Van Scoy Diamond Mine well-known in Wilkes-Barre?	
26	A. I don't know that.	
27	Q. Was it at any time well-known in Wilkes-Barre?	
28	A. I don't know that. Really, I can't answer that.	
29	I can't answer that.	

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<p>1 A. We do buy direct from manufacturers from Israel, 2 yes. 3 Q. Who is your direct -- who is manufacturing in 4 Israel? 5 A. IGAT would be, that would be one. Aton Coozy. 6 Q. Isn't he located in New York? 7 A. He has an office in New York. He has an office 8 in Russia and Israel as well. 9 Q. Is that what, generally, in the industry, diamond 10 industry, when you say you are a direct importer, does it 11 generally mean that you would import it through someone 12 like Aton Coozy? 13 A. Sure. 14 Q. Was there an incident with Aton Coozy where you 15 got diamonds on credit which made Aton Coozy rather angry 16 at you? 17 A. No. 18 Q. Was there an incident where you got diamonds on 19 credit and you were supposed to have the money for Aton 20 Coozy for the diamonds that he gave you, but when he came 21 to collect the money, the money was not there, it was 22 already spent? 23 A. No, not true, no. 24 Q. There was never any incident with Aton Coozy --</p>	<p>1 Mine around the sale of diamonds, correct? 2 A. I can't answer for that. I don't know that. 3 Q. He didn't sell those other items though that you 4 mentioned. 5 A. I think he did, actually. He sold some different 6 stuff, yeah, from what I recall, yes. 7 Q. Silver? 8 A. No. 9 MR. QUINN: Is that a question? 10 Q. Did they sell silver? 11 A. I don't know that. 12 Q. You said no before. 13 MR. QUINN: Objection. That's not a 14 question. 15 THE WITNESS: Repeat the question. 16 BY MR. PETOCK: 17 Q. Did you testify before -- did you say no when you 18 thought I was asking you a question as to whether your 19 father sold silver? 20 MR. QUINN: That's two questions. 21 Q. You thought I asked you a question before as to 22 whether your father sold silver; is that correct? 23 A. Correct. 24 Q. And you said no, correct?</p>
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<p>1 A. None whatsoever. 2 Q. -- where you got diamonds on credit and you had 3 spent the money, you sold the diamonds, spent the money? 4 A. Never. 5 Q. And Aton came time to collect, you didn't have 6 it? 7 A. Never. 8 Q. Do you get a lot of your merchandise COD, cash on 9 deposit? 10 A. No, I do not. If it's a new company, first time, 11 but that's, other than that, no. 12 Q. How is your credit? 13 A. Very good. 14 Q. Do you sell colored stones? 15 A. Sure. 16 Q. What types? 17 A. All types of colored stones. 18 Q. What other merchandise do you sell besides 19 diamonds? 20 A. Pearls, gold, sterling silver. 21 Q. What percentage of your business is the sale of 22 merchandise other than diamonds? 23 A. I don't know that. 24 Q. Your father built up the name Van Scoy Diamond</p>	<p>1 A. Correct. 2 Q. Did your father sell silver? 3 A. I'm sorry. I don't understand that. 4 Q. Did your father sell silver? 5 A. Does my father -- 6 Q. Did your father sell silver? 7 A. Not that I know. I don't know that. 8 Q. It's a tongue twister. 9 A. I don't know that. 10 Q. Did your father sell colored stones? 11 A. Yeah, yes. 12 Q. Have there been complaints about the quality of 13 the goods or services provided by Van Scoy Diamond Mine 14 of Delaware, your store? 15 A. Not to my knowledge at all, no. 16 Q. Are you aware of any complaints against any 17 Van Scoy Diamond Mine? 18 A. I don't understand the question. 19 Q. Are you aware of any complaints against a 20 Van Scoy Diamond Mine operating anywhere? 21 A. What kind of question -- what complaints? Yeah, 22 there is complaints. 23 Q. What complaints are you aware of? 24 A. I mean, there is just one that was an appraisal</p>

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<p style="text-align: center;">Page 106</p> <p>1 that was done by the plaintiff. And they moved to 2 Alabama. And he's a state trooper in Alabama. And they 3 quoted, he measured a stone of what it was and said what 4 the weight of it was. In fact, they took it to a jeweler 5 to have it weighed and to trade it in. And it was not 6 anywhere near what it was. And, supposedly, what he told 7 me, they were going to contact the Better Business 8 Bureau, I believe, back in Wilkes-Barre on that. That 9 was one of the latest ones. I remember that.</p> <p>10 Q. Are you aware of any other complaints against – 11 so are you aware of complaints against the Van Scoy 12 Diamond Mine being operated by the plaintiff in 13 Wilkes-Barre?</p> <p>14 A. The one that I know that they contacted – there 15 was one letter that was sent to us.</p> <p>16 Q. Why was that letter sent to you?</p> <p>17 A. He was, actually, originally from the area and he 18 moved away.</p> <p>19 Q. From what area?</p> <p>20 A. Delaware.</p> <p>21 Q. He was from Delaware and he moved where?</p> <p>22 A. To Alabama.</p> <p>23 Q. Why did the state trooper send a letter to you?</p> <p>24 MR. QUINN: Asked and answered.</p>	<p style="text-align: center;">Page 108</p> <p>1 looking for the plaintiff, actually, to pursue this.</p> <p>2 Q. What was the plaintiff's name on the certificate?</p> <p>3 A. It was Wayne Van Scoy.</p> <p>4 Q. This trooper, did he originally buy the stone 5 from the store in Wilkes-Barre or the store in Delaware?</p> <p>6 A. Delaware.</p> <p>7 Q. And the certificate had the plaintiff's name on 8 it?</p> <p>9 A. Yes, it did.</p> <p>10 Q. Do you have any idea why the certificate of the 11 store in Delaware would have had, of a diamond sold from 12 a store in Delaware would have had Wayne's name on it?</p> <p>13 A. I don't know that. I can't answer that.</p> <p>14 Q. Are there any documents related to this?</p> <p>15 A. Yeah. There was something. I can certainly – 16 I'll try to find it.</p> <p>17 Q. What would that document have been, a letter to 18 you?</p> <p>19 A. It was a letter, yes. It was a letter that was 20 sent to me, yes.</p> <p>21 Q. Are you aware of any other complaints against a 22 Van Scoy Diamond Mine jewelry store?</p> <p>23 A. Not that I know, no.</p> <p>24 Q. That's the only complaint that you are aware of?</p>
<p style="text-align: center;">Page 107</p> <p>1 MR. PETOCK: No, it's not.</p> <p>2 MR. F. PETOCK: You can answer it.</p> <p>3 MR. QUINN: The record will show it was 4 asked and answered two questions ago.</p> <p>5 BY MR. PETOCK:</p> <p>6 Q. Did the state trooper think there was a 7 connection between your store and Wayne's store?</p> <p>8 A. No. It was, actually, where he originally 9 purchased the ring, where my father had the store there 10 originally.</p> <p>11 Q. He originally purchased the ring from your 12 father's store?</p> <p>13 A. Correct.</p> <p>14 Q. What was the next step in this equation?</p> <p>15 A. It was – the dates exactly I'm not sure. But he 16 stated they went to have the stone – he moved down to 17 Alabama and had the stone to be traded in. And on the 18 appraisal which has the plaintiff's name on it stating 19 what the quality of the stone is, the color and so forth 20 of the stone and the make of the stone and the weight of 21 the stone, which, in fact, none of the equations matched, 22 quote, unquote, of what this gentleman was stating. And 23 he took it to a gemologist down in the area there. And 24 he was just trying to follow through with it. And he was</p>	<p style="text-align: center;">Page 109</p> <p>1 A. Yes.</p> <p>2 Q. Have you had any of your brothers or sisters work 3 for you at the store, your store?</p> <p>4 A. Yes.</p> <p>5 Q. Who?</p> <p>6 A. My brother that's deceased, Keith, and my brother 7 Kenny.</p> <p>8 Q. When did Kenny work for you?</p> <p>9 A. Exact dates I'm not sure. I would probably say 10 approximately three years ago.</p> <p>11 Q. What was Kenny's position at the store?</p> <p>12 A. Sales.</p> <p>13 Q. Has Kenny ever owned a Van Scoy Diamond Mine 14 store?</p> <p>15 A. No, not that I know of. No.</p> <p>16 Q. Did you ever speak with Kenny with respect to the 17 registered trademark of the name Van Scoy Diamond Mine?</p> <p>18 A. I don't understand that question.</p> <p>19 Q. Did you ever speak to Kenny about the registered 20 trademark Van Scoy Diamond Mine?</p> <p>21 A. Prior to the lawsuit?</p> <p>22 Q. Prior to the lawsuit.</p> <p>23 A. Not at all.</p> <p>24 Q. What about after the lawsuit?</p>

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<p>1 A. Yeah. I was in disbelief. That's pretty much – 2 that's all that was really said.</p> <p>3 Q. What were you in disbelief about?</p> <p>4 A. The name, when the name Van Scoy Diamond Mine 5 went bankrupt, I was solely under the impression that the 6 plaintiff and also Rick Sendrick had a letter made up, 7 typed up from an attorney. They paid \$5,000 each to 8 state that the name Van Scoy Diamond Mine was worth 9 nothing. And I'm under the impression as well that it 10 was by the court they demanded to take the name down, Van 11 Scoy Diamond Mine.</p> <p>12 And, at that point, I felt there was no need 13 whatsoever for a trademark or anything. I mean, 14 everybody -- that's all they wanted to do. They didn't 15 want nothing to do with "diamond mine." They wanted 16 nothing to do with that. And that's why I, actually, we 17 went with Van Scoy Diamond Mine of Delaware, 18 Incorporated.</p> <p>19 Q. So the bankruptcy, before people were told to 20 stop using the mark and stuff, you knew about the 21 trademark?</p> <p>22 A. No, I knew nothing. I knew nothing, absolutely 23 nothing about any trademark at all, nothing. My father 24 gave me a name. That's all I know.</p>	<p>1 basic family gathering for the holidays. 2 Q. During that period, 1994 to 2000, that was during 3 the bankruptcy, correct?</p> <p>4 A. I don't know that. I'm assuming. I guess. I 5 don't know that.</p> <p>6 Q. Was there any talk about the bankruptcy during 7 any of those visits home during the holidays between 1994 8 and 2000?</p> <p>9 A. I don't recall that.</p> <p>10 Q. Did you ever talk to anyone about the bankruptcy 11 during the bankruptcy, anyone? Was it of interest to 12 you?</p> <p>13 A. I don't know really. No. I don't know. I don't 14 know that.</p> <p>15 Q. Your dad was in the hospital, Christiana Hospital 16 in Delaware, in both 1996 and 1998; is that correct?</p> <p>17 A. I believe so.</p> <p>18 Q. Did you see Wayne in Delaware at any time during 19 that period?</p> <p>20 A. Yes, I did.</p> <p>21 Q. Do you remember anything about any conversations 22 you had during that period?</p> <p>23 A. Yeah. I mean, just how is he doing? What is the 24 status? What's going on? He actually stopped by the</p>
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<p>1 Q. Were you aware that in approximately 2000, Kenny 2 was placing calls to the trademark office or to anyone 3 else about the renewal of the trademark and service mark 4 for Van Scoy Diamond Mine?</p> <p>5 A. No, no, I do not.</p> <p>6 Q. Would you be surprised to know that Kenny knew 7 about the trademark and the fact that it was federally 8 registered?</p> <p>9 A. I don't know that. I'm not Kenny.</p> <p>10 Q. Were you ever aware that your father had 11 registered a trademark?</p> <p>12 A. No, I was not.</p> <p>13 Q. How often have you seen Wayne since you opened 14 the store in 1994?</p> <p>15 A. A handful of times I would have to say.</p> <p>16 Q. Were you home for the holidays, maybe 17 Thanksgiving and Christmas, between 1994 and 2000?</p> <p>18 A. Yeah, yes.</p> <p>19 Q. Did you see Wayne during that time?</p> <p>20 A. I would have to say yes.</p> <p>21 Q. Could you tell me about any conversations the two 22 of you had during that period?</p> <p>23 A. Geez, happy holidays. How are you doing? Good 24 to see you. Here's your gifts and all that, just your</p>	<p>1 store to use the bathroom. He was – yeah, I remember 2 conversations, yes.</p> <p>3 Q. Did he say anything to you when he stopped by the 4 store to use the bathroom that you recall?</p> <p>5 A. How are you doing?</p> <p>6 Q. What year was that?</p> <p>7 A. I don't recall that; what year.</p> <p>8 Q. It was either '96 or '98 though, right?</p> <p>9 A. I would have to say I don't recall that.</p> <p>10 Q. Did you and Wayne get in an argument about 11 anything while your dad was in the hospital that you 12 recall?</p> <p>13 A. I don't recall.</p> <p>14 Q. Was there a fight about you not visiting your dad 15 in the hospital?</p> <p>16 A. No, I don't recall that.</p> <p>17 Q. You don't recall a fight between you and Wayne or 18 where Wayne was disturbed that you were not visiting your 19 dad in the hospital?</p> <p>20 A. No. I don't know. I don't recall that, no.</p> <p>21 Q. Do you recall calling Wayne in 2002 or 22 approximately 2002 about someone who wanted to open up a 23 franchise using the name Van Scoy Diamond Mine?</p> <p>24 A. I don't recall that, no, I don't. I really</p>

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1 don't.	1 alive at the time. And we felt that my father is still
2 Q. Did you call Wayne and ask him about someone who	2 alive, which we feel that it was the appropriate thing to
3 wanted to use the name Van Scoy Diamond Mine?	3 do. It was the house that we all grew up in. It was the
4 A. I don't recall that. That's the same question.	4 house that my mother, our mother raised us in. And there
5 I don't recall that.	5 was food over there. And it was very, very hungry. And
6 Q. Has anyone ever approached you about the	6 we just wanted to go there and have something to eat and
7 possibility of franchising the name Van Scoy Diamond Mine	7 sit down and kind of gather our thoughts and our wits and
8 or using the name Van Scoy Diamond Mine?	8 appreciate things that we had and where we grew up in. I
9 A. Not to my knowledge, no.	9 recall that.
10 Q. Have you called Wayne about anything to do with	10 Q. Do you recall specifically what was said between
11 Van Scoy Diamond Mine?	11 you and Wayne?
12 A. I don't understand that question.	12 A. No, I do not.
13 Q. Have you ever placed a call to Wayne on the	13 Q. Was anything said about the trademark?
14 telephone asking him questions about anything to do with	14 A. No.
15 the name Van Scoy Diamond Mine?	15 Q. Do you remember a conversation between you and
16 A. Not that I know of, no.	16 Wayne that ended up in somewhat of an argument concerning
17 Q. At no time did a person, did a person approach	17 your parents going to Atlantic City?
18 you about a possibility of franchising a Van Scoy Diamond	18 A. No. Say that question again.
19 Mine in Delaware or in any place?	19 Q. Do you recall a conversation between you and
20 A. No, I don't recall anything. No, I do not.	20 Wayne that ended up becoming a heated conversation and
21 Q. Isn't that something you would remember?	21 what might be characterized as an argument concerning
22 A. I don't know to be honest. I really don't know	22 your parents going to Atlantic City?
23 that. I have my business. I focus on my business.	23 A. Yes, I do, several.
24 Q. Isn't that related to your business?	24 Q. What were those -- were they arguments?
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1 A. When it comes to franchising and all that stuff	1 A. Yes.
2 or whatever, that has nothing to do with me. So, really,	2 Q. What were they about?
3 I don't know that.	3 A. He was trying to tell my parents they can't go.
4 Q. Why doesn't it have anything to do with you?	4 And he would, actually, withhold my mother's Social
5 A. Because I have my own business and I focus on my	5 Security check until that Monday.
6 own store. And that was my store that was given to me	6 Q. Why, in your opinion -- did your parents have
7 with that name.	7 gambling problems?
8 Q. In 2003 your mother died, correct?	8 A. I can't answer that.
9 A. Yeah, that's correct.	9 Q. What year was that argument?
10 Q. Do you remember the day you went to pick out the	10 A. I don't recall. It was several.
11 caskets?	11 Q. Was it recently?
12 A. Yes.	12 A. My mom passed away in 2003.
13 Q. Do you remember a fight that occurred that day	13 Q. Do you think there may have been an argument in
14 between several members of your family, including	14 2003?
15 yourself, a verbal fight?	15 A. I don't recall.
16 A. Yes.	16 Q. Have you been in many arguments with your brother
17 Q. What was that fight about?	17 Wayne?
18 A. Everybody going over to my parents' house at the	18 A. Growing up, yes.
19 time to go have dinner. Everybody has sent food and	19 Q. What about recently but before the litigation?
20 everything to the house where we grew up.	20 A. No. I stayed far away. I live in Delaware.
21 Q. Could you explain why there was a fight over that	21 Q. When you guys talk, does it usually end up in an
22 more specifically?	22 argument?
23 A. The plaintiff had some, obviously, some issues	23 A. Not always. 90 percent.
24 with some of the family members. And my dad was still	24 Q. Have you had any conversations or correspondences

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1 with Tommy concerning Wayne in general recently?	1 Q. What happened to your father that forced him to
2 A. I don't know. I can't really -- I don't know	2 file bankruptcy?
3 about that. No. I would have to say no.	3 A. I don't know.
4 Q. What about with Tony?	4 Q. Did it have anything to do with gambling?
5 A. And the question would be again?	5 A. I don't know.
6 Q. Whether you have had any conversations or	6 Q. Was your father a gambler?
7 correspondences with Tony concerning Wayne.	7 A. I don't know.
8 A. It's really -- no, no.	8 Q. Did your father go to Atlantic City a lot?
9 Q. Same question as applied to Betsy.	9 A. I don't know that.
10 A. No.	10 Q. Did you ever know your father to go to Atlantic
11 Q. Pam?	11 City?
12 A. No.	12 A. Yeah.
13 Q. Ken?	13 Q. Did you ever know your father to lose any amount
14 A. No.	14 of money in Atlantic City?
15 Q. What do you know about the bankruptcy proceedings	15 A. I didn't know that.
16 of your father?	16 Q. Did you ever possess any document related to the
17 A. I know he filed for bankruptcy. I know the name	17 bankruptcy?
18 was stated as being worth nothing from an attorney that	18 A. After the suit, yes.
19 wrote up a letter for the plaintiff and Rick Sendrick.	19 Q. What about before the suit during the bankruptcy?
20 And that's all I really know. That's my father's	20 A. No.
21 dealing. That wasn't mine.	21 Q. What about that document that you said that Wayne
22 Q. How did you hear about the name being worth	22 and Rick had drawn up?
23 nothing? How did you hear about this letter that was	23 A. What about it?
24 drawn up?	24 Q. Did you ever see that during the bankruptcy?
1 A. Through Rick Sendrick.	1 A. During the bankruptcy, no.
2 Q. Rick Sendrick told you?	2 Q. Have you seen it since then?
3 A. Yes.	3 A. No. Rick, I believe, said he has a copy though.
4 Q. What else did he tell you about it?	4 Q. When did Rick Sendrick tell you about the letter
5 A. That's all. He said the name, that was worth	5 that him and Wayne had drawn up?
6 nothing. And the plaintiff, your plaintiff, and Rick	6 A. Actually, I've heard it several times.
7 Sendrick had both paid, quote, unquote, \$5,000 to have	7 Q. When was the first time?
8 this letter written up and to show the court that the	8 A. The first time I don't recall.
9 name was worth absolutely nothing.	9 Q. The second time?
10 Q. Did you have any idea as to why they were	10 A. I don't recall. Last time probably about a week
11 concerned about showing that the name was worth nothing?	11 ago.
12 A. Because they wanted to -- I'm assuming just to	12 Q. Did you hear about it when it was being first
13 show the court, the bankruptcy court that there is	13 drawn up?
14 nowhere else to go with this. This Van Scoy Diamond Mine	14 A. No, it was after, after it was already drawn up.
15 was in with the bankruptcy and that the value of the name	15 Q. But that was during the bankruptcy at some point,
16 Van Scoy Diamond Mine was worth nothing. And that's	16 right?
17 exactly what it came out to, was worth nothing.	17 A. Correct.
18 Q. When did you first hear talk about the bankruptcy	18 Q. Back in the mid '90s?
19 with respect to your father?	19 A. Right, exactly.
20 A. He filed what? September, I think, September	20 MR. PETOCK: I would like to have this
21 13th. I got married in July. And I foresaw what was	21 marked as the next exhibit.
22 coming forward. And that's why I opted to certainly go	22 (Van Scoy Deposition Exhibit No. 9,
23 out on my own. And my father gave me the name and said	23 Bankruptcy Petition, was marked for identification.)
24 good luck and I love you very much. I'm proud of you.	24 BY MR. PETOCK:

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1 Q. Kurt, what else did you talk about with Rick 2 Serrick recently? 3 A. That was really it. That was it. I asked for a 4 deposition from him or an affidavit stating that he knew 5 that Wayne was down here and Wayne knew, certainly, I was 6 in the business and all that. And he didn't want to get 7 involved. And that's when it was stated that he said 8 there was a document that was written up by an attorney. 9 And they both had it written up. And it stated that the 10 name Van Scoy Diamond Mine was worth nothing. 11 Q. Could you tell me more about this affidavit you 12 asked him for? 13 A. Just to state that Wayne knew -- Rick knew that 14 Wayne knew that I was down here, basically. 15 Q. When did this conversation occur? 16 A. About a week ago. 17 Q. What else have you talked to Rick about? 18 A. That's it. 19 Q. Can you tell me what the document is that's in 20 front of you? 21 A. Yes. U.S. Bankruptcy, Middle District of 22 Pennsylvania, Bankruptcy Petition. 23 MR. PETOCK: For the record, this is Exhibit 24 9 that we are talking about now.	1 Q. How about Thomas Feissner? 2 A. I heard the name mentioned, yes. 3 Q. Do you know who that is? 4 A. I don't know exactly who he is. I know he was an 5 attorney if I'm not mistaken. 6 Q. By the way, I'm referring back to Exhibit 9. Is 7 this everything that was given to you? 8 A. To the best of my knowledge that I know of. 9 Q. Is anything missing from it? 10 A. I don't really recall right now. 11 Q. Did you take anything out of it? 12 A. Not that I know of. I'm sorry. Not that I know 13 of. 14 Q. Regarding Exhibit 9, has anyone else had access 15 to that document since you got it? 16 A. No, not that I know of, no. 17 MR. PETOCK: Mark this Exhibit 10, please. (Van Scoy Deposition Exhibit No. 10, Order Approving Agreement in Settlement of Adversary Proceedings and Contested Matters, was marked for identification.) 22 BY MR. PETOCK: 23 Q. Exhibit 10 is an Order Approving the Agreement 24 and Settlement of Adversary Proceedings and Contested
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1 BY MR. PETOCK: 2 Q. Could you tell me where you got this? 3 A. Yeah. The Federal Courthouse in Wilkes-Barre. 4 Q. Did you personally obtain this? 5 A. I did. 6 Q. When? 7 A. It was shortly after I was notified that I was 8 being sued. 9 Q. They printed it for you? 10 A. Yes, she did, yeah. 11 Q. Why did you go to the Federal Courthouse in 12 Wilkes-Barre? What was the purpose of it? What were you 13 trying to find out? 14 A. I was trying to find out where the bankruptcy 15 was. I wanted to, certainly, find out what the name 16 issue, certainly worth nothing. Also, I went to find 17 out, actually, if it was still ongoing and also to find 18 out how long they actually had the name not being used. 19 Q. Whose markings are on this? 20 A. I have no idea. All I know is I got copies. 21 Q. Did you ever hear the name Robert P. Sheils? 22 A. Robert P. Sheils. No. I know a Joe Sheils my 23 dad always used to mention, his best friend. I don't 24 know if it's any relation or not.	1 Matters with Releases and Other Provisions; is that 2 correct? 3 A. Yes. 4 Q. Did you obtain this document? 5 A. Yes, I did. 6 Q. Where did you obtain this document? 7 A. Actually, at the bankruptcy court in 8 Wilkes-Barre, Pennsylvania. 9 Q. Had you ever seen this document? 10 A. No. Like I said, it was after I was notified of 11 being sued. 12 Q. That's the first time you ever -- 13 A. Yes, sir. 14 Q. Have you read it since? 15 A. No, actually. I mean, it's been a while. 16 Q. But, at some point, you have read it since you 17 obtained it? 18 A. After we had the suit, yes. 19 Q. What assets of your father's did the bankruptcy 20 court seize? 21 A. I know nothing of that, what took place. 22 Q. When you were home for the holidays, Thanksgiving 23 and Christmas, was your father's store always operating 24 when you were up there?

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1 A. No. I believe the majority of 1995, actually,
 2 that store was closed –
 3 Q. Why?
 4 A. -- by the sheriff.
 5 Q. Was that as a result of the bankruptcy?
 6 A. That is correct, yes.
 7 Q. Was anything seized?
 8 A. Whatever was inside they locked up and that was
 9 it. It shut down.

10 MR. PETOCK: Break.

11 VIDEO SPECIALIST: This ends Tape Number 3
 12 of the video deposition of Kurt Van Scoy. The time is
 13 1:01.

14 (Thereupon, a lunch break was had.)

15 VIDEO SPECIALIST: This is Tape Number 4 of
 16 the video deposition of Kurt Van Scoy. The time is 1:59.

17 BY MR. PETOCK:

18 Q. Kurt, did you speak with your attorney at all
 19 during the break about your deposition testimony that you
 20 have given or expect to give today?

21 A. No.

22 Q. Before the break, we were talking about the
 23 bankruptcy and, in particular, what assets the bankruptcy
 24 court seized from your father or from your father's

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1 know that.
 2 Q. Did your parents own the house after the
 3 bankruptcy?
 4 A. I don't know that. I have been down here. I
 5 don't know.
 6 Q. Who owns the house now?
 7 A. I don't know. To be honest, I really don't know.
 8 Q. Have you been to the house since 2000?
 9 A. Yeah.
 10 Q. Did your parents own it then?
 11 A. I don't know. Did my parents live there? Yeah,
 12 my parents lived there. Who owned it? That's none of my
 13 business.
 14 Q. Were you close to your parents?
 15 A. Sure, I was close to my parents. Absolutely.
 16 Q. Yet you didn't know whether they owned the house?
 17 A. I don't sit down, boy, do you own the house
 18 today, mom? Do you own the house today, dad? It was
 19 nothing like that. It was, hi, how are you? I love you
 20 very much. Good to see. That was really it. There was
 21 nothing financially mentioning anything.
 22 Q. Are you aware that Wayne owns the house now?
 23 A. I really don't know.
 24 Q. Would it be a surprise you if I told you Wayne

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1 company. Can you tell me what was seized?
 2 A. I don't know.
 3 Q. Do you know anything that they attempted to
 4 seize?
 5 A. I know nothing. I was down here at the time.
 6 Q. Kurt, didn't you tell me that they seized the
 7 jewelry from his jewelry store, Van Scoy Diamond Mine?
 8 A. I didn't say that, no.
 9 Q. Did they seize the jewelry from his jewelry
 10 store?
 11 A. I can't answer that question. I don't know. I
 12 was not there.
 13 Q. Did you hear from anyone as to what they may have
 14 seized?
 15 A. All I know, he filed for bankruptcy and they
 16 closed the store. They padlocked the door.
 17 Q. So did they seize the store?
 18 A. They padlocked the front door. That's what I
 19 heard, yeah.
 20 Q. What about your parents' house, your father's
 21 house?
 22 A. I don't know any of that information.
 23 Q. Did the bank try to foreclose on the house?
 24 A. I don't know any of the information. I don't

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1 owns the house now?
 2 A. I wouldn't be surprised I guess. I don't know.
 3 I don't know the answer to that question really. I
 4 really don't.
 5 Q. Were you speaking with your brother Tony at all
 6 during the bankruptcy proceedings?
 7 A. I spoke to him, yes.
 8 Q. Were you aware that Tony bid on some diamonds at
 9 auction during the bankruptcy?
 10 A. I was aware of that, yeah. That was certainly
 11 mentioned via your plaintiff.
 12 Q. Wayne told you about that?
 13 A. Yes.
 14 Q. When?
 15 A. I don't recall.
 16 Q. What else did Wayne tell you about the
 17 bankruptcy?
 18 A. That's all. When you mentioned about the
 19 bidding, I guess, merchandise or whatever, I know that's
 20 when the plaintiff mentioned it.
 21 Q. Did Wayne tell you that he was attempting to buy
 22 the trademark?
 23 A. Nothing, nothing in the kind.
 24 Q. Did Wayne ever have any discussions with you

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1 concerning contributing any money towards a bankruptcy
 2 settlement?
 3 A. No, not that I know. No.
 4 Q. Did he have any conversations with you about
 5 contributing money to anything regarding the bankruptcy?
 6 A. None whatsoever. Not that I know of, no.
 7 Q. When did you learn that the plaintiff, Wayne
 8 Van Scoy, bought the trademark Van Scoy Diamond Mine?
 9 A. November 18th, 2004. I didn't have any idea of
 10 anything certainly with a trademark. 2004, yes.
 11 Q. Has Wayne ever asked you to help pay for the
 12 trademark?
 13 A. Nothing of the kind, no.
 14 Q. Were you aware that the bankruptcy court ordered
 15 that the Mundy Street Van Scoy Diamond Mine be closed?
 16 A. Yes, I was aware of that. Yes.
 17 Q. How did you find out about that?
 18 A. A family member, if I'm not mistaken. I think it
 19 was my mom actually.
 20 Q. Do you remember when that was that you found out
 21 about it?
 22 A. Exact date I don't know.
 23 Q. Was it probably about the date it was forced to
 24 be closed, approximately?

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1 A. Yeah, I would say probably that day, if not soon
 2 after, a few days.
 3 Q. Were you aware that some members of your family,
 4 including Wayne, were told that they had to stop using
 5 the mark Van Scoy Diamond Mine by the bankruptcy court?
 6 A. Say that again. I didn't understand the
 7 question.
 8 Q. Were you aware that Wayne was forced to stop
 9 using the mark Van Scoy Diamond Mine?
 10 A. It was along the lines of that, yes. I think it
 11 was my mom that told me that, yes.
 12 Q. When do you think she told you that?
 13 A. Shortly after noticing or being noticed that they
 14 had to take the name down.
 15 Q. Were you aware of the fact that your sister Pam
 16 and her husband, Pam and Rick Sendrick, were forced to
 17 take the name down by the bankruptcy court?
 18 A. I'm not so much with that. I mean, it was pretty
 19 much, the main was really the 154 Mundy Street location.
 20 Q. Were you aware that Pam and Rick Sendrick were
 21 enjoined by the bankruptcy court; in other words, forced
 22 to stop using the mark?
 23 A. Again, I don't know. More what we discussed with
 24 my mom or my parents was more or less the 154 Mundy

1 Street location.
 2 Q. Did you have any information that they might have
 3 been forced to take down their mark? Did your mom
 4 mention that also?
 5 A. To be honest with you, I really don't remember.
 6 Q. Were you aware that your sister Betsy and her
 7 spouse were enjoined from using the mark by the
 8 bankruptcy court?
 9 A. No, I really didn't know.
 10 Q. Did you ever think that if the bankruptcy court
 11 knew of your store in Delaware you would have been
 12 enjoined from using the mark also?
 13 A. I don't see any reason or connection. The store
 14 was closed for 16 months prior to being reopened. But,
 15 also, my father filed for Chapter 13 in September and I
 16 actually opened up in November.
 17 Q. Did you ever think that if the bankruptcy court
 18 learned of your use of the mark, Van Scoy Diamond Mine of
 19 Delaware, you would have been enjoined from using the
 20 mark?
 21 A. Do I? No.
 22 Q. Why did you think you would have been treated
 23 differently than other members of your family?
 24 A. This store was opened, actually, after the fact

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1 that my father filed for bankruptcy. And the store,
 2 actually was, there was nothing there. I had to provide
 3 everything myself, taking out a personal loan to open the
 4 store and sleep in the back of the store for six months
 5 to try to get the store started. So there was nothing,
 6 quote, unquote, handed to me, if you will, or merchandise
 7 or anything of any sort from my father or anything to do
 8 with the bankruptcy.
 9 Q. Did you make any effort to avoid the bankruptcy
 10 court knowing that you were using the mark Van Scoy
 11 Diamond Mine or the fact that you had a store in
 12 Delaware?
 13 A. Avoid, no.
 14 Q. Was it known in the family that if -- was it
 15 known within your family, your brothers and your sisters,
 16 to keep the fact that you had a Van Scoy Diamond Mine in
 17 Delaware away from the knowledge of the bankruptcy court?
 18 A. I don't know that answer. I'm not the rest of
 19 the family.
 20 Q. Did you ever ask anyone in the family to keep the
 21 fact that you had a Van Scoy Diamond Mine in Delaware a
 22 secret from the bankruptcy court or private from the
 23 bankruptcy court?
 24 A. No.

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1 MR. PETOCK: Could we go off the record?
2 VIDEO SPECIALIST: Off the record at 2:09.
3 (Thereupon, a discussion was had off the
4 record.)

5 VIDEO SPECIALIST: Back on the record at
6 2:10.

7 BY MR. PETOCK:

8 Q. Kurt, I know you've already answered this
9 question. But would you, please, answer it again because
10 I'm not exactly clear.

11 MR. QUINN: Then I will not object because
12 you are not clear as to the answer.

13 BY MR. PETOCK:

14 Q. Why is it that you felt that the bankruptcy court
15 didn't have a right to stop you from using the mark?

16 A. I'm not the bankruptcy court. I can't answer
17 that. I don't know that.

18 Q. Wasn't it your feeling that the bankruptcy
19 court -- did you feel that the bankruptcy court had a
20 right to make you stop using the mark?

21 A. No.

22 Q. Why is it that you felt that the bankruptcy court
23 didn't have a right to make you stop using the mark?

24 A. The bankruptcy was already in progress at the

1 THE WITNESS: I still don't understand the
2 question.

3 BY MR. PETOCK:

4 Q. I'll rephrase.

5 A. Please.

6 Q. Is there a difference between you owning the
7 store and you owning the mark in the store?

8 A. I don't understand the question. I don't
9 understand that.

10 Q. Is there a difference between the actual physical
11 store and the name of the store?

12 A. I don't understand it. I don't understand it. I
13 don't know.

14 Q. If the bankruptcy court had ordered you to stop
15 using the mark, would you have?

16 A. Well, if it's by court, I think I would have to.

17 Q. Did you think the bankruptcy court had a right to
18 ask you to stop using the mark?

19 A. I don't know.

20 Q. I want to ask you about some of the conversations
21 you had with Wayne that you previously talked about.
22 Specifically, when you were home for the holidays between
23 1994 and 2000, were there any conversations between you
24 and Wayne where Wayne brought up your use of the mark of

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1 time when I actually, when I opened the store. It was
2 already after the fact that the bankruptcy started. He
3 filed in September. I opened November the 12th of 1994,
4 November the 12th, 1994. During that time, it's in the
5 proceedings already of what was going on. I was open
6 after the fact that he already filed for bankruptcy.

7 Q. But the bankruptcy court wasn't concerned about
8 your store. It was concerned about your store's name;
9 isn't that correct?

10 A. I do not know. I can't answer that. I do not
11 know.

12 Q. Do you agree that there is a difference between
13 the fact that the bankruptcy court would make a store
14 close and the fact that the bankruptcy would make a store
15 change its name because of the fact that the bankruptcy
16 court owned the mark?

17 MR. QUINN: I object to the form of that
18 question.

19 MR. F. PETOCK: You have to answer the
20 question. He has an objection as to form.

21 THE WITNESS: What was the question again?

22 MR. F. PETOCK: Can you read it back?

23 (Thereupon, the reporter read back the
24 pending question.)

1 Van Scoy Diamond Mine?

2 A. Absolutely not.

3 Q. What about the time where you, where Wayne was
4 visiting your father in the hospital in 1996 and 1998,
5 did Wayne ever discuss anything with you concerning your
6 use of the trademark or mark Van Scoy Diamond Mine?

7 A. When he stopped in to use the bathroom, no, he
8 did not, at our store.

9 Q. What about any other time?

10 A. Nothing, nothing of the kind.

11 Q. Has Wayne ever talked to you about your use of
12 the mark Van Scoy Diamond Mine?

13 A. Not until November the 18th of 2004 was when I
14 knew anything about any kind of a mark, trademark or
15 anything of any sort. Again, all I know is, in 1994, my
16 father gave me the name and the sign for the business to
17 open.

18 Q. I'm not asking you specifically about whether you
19 knew about the trademark. I'm just asking you whether he
20 ever discussed the name of your store with you.

21 A. None whatsoever.

22 Q. Did he ever tell you that you were getting away
23 with murder with respect to your use of the trademark?

24 A. Not that I'm aware of, no. No, I would

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1 definitely have to say no.

2 Q. Anything to that effect? Did he ever object to
3 you, in any way, as to your use of the mark Van Scoy
4 Diamond Mine?

5 A. None whatsoever.

6 Q. Was permission given to your company to use the
7 trademark?8 A. The permission was given to me from my father to
9 use the name Van Scoy Diamond Mine, yes.

10 Q. Was it given to your company?

11 A. Yeah.

12 Q. How so?

13 A. My father.

14 Q. Did he tell you that your company had a right to
15 use the mark?

16 MR. QUINN: Already asked already answered.

17 So I object.

18 BY MR. PETOCK:

19 Q. Are you being financed to defend this lawsuit by
20 any of your family members?

21 A. No, I'm not.

22 Q. By anyone else?

23 A. No, I'm not.

24 Q. Is anyone giving you any financial help to defend

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1 de-confuse you. That all kind of got, you guys got
2 talking at the same time. I don't think the record is
3 going to be clear. It's certainly not clear in my mind
4 as to what was happening.

5 BY MR. PETOCK:

6 Q. Did you ever register the domain name
7 vancoscoydiamondmine.com?

8 A. Yes.

9 MR. QUINN: Objection to the form of the
10 question in the sense when he says you, are you referring
11 to the defendant personally or the entity, the three
12 defendants or what?

13 BY MR. PETOCK:

14 Q. I am referring to you and your company. I'm
15 referring to you personally, Kurt. Did you register the
16 domain name vancoscoydiamondmine.com?

17 A. Personally, no.

18 Q. Did your company register the domain name
19 vancoscoydiamondmine.com?

20 A. Yes.

21 Q. When did that occur?

22 A. June - July 12th, I think, 2002.

23 Q. Did someone recently renew the registration?

24 A. I'm not sure. I'm really not sure.

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1 this lawsuit?

2 A. It's me, myself and I. No.

3 MR. PETOCK: I would like to have this
4 marked as the next exhibit.5 (Van Scoy Deposition Exhibit Nos. 11 and 12,
6 Website Pages, were marked for identification.)

7 BY MR. PETOCK:

8 Q. Just so the record is clear, do you agree that
9 Number 11 is a partial printout of your website that was
10 hosted at vancoscoydiamondmine.com?

11 A. Yes.

12 Q. And do you agree that Exhibit 12 is a printout of
13 the website that is currently hosted at
14 vancoscoydiamondsofdelaware.com?

15 A. That's correct.

16 Q. Who registered the domain name Van Scoy Diamond
17 Mine of Delaware dot com? So we can keep it clear, I'm
18 talking about Van Scoy Diamond Mine of Delaware dot come.19 There is two different domain names,
20 correct? You originally had Van Scoy Diamond Mine of
21 Delaware --

22 A. Vancoscoydiamondmine.com. I don't know what --

23 Q. Okay. Sure.

24 MR. QUINN: If you are confused, ask him to

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1 Q. Did you recently ask someone to renew the
2 registration?

3 A. No. There was -- no, not that I'm aware of, no.

4 Q. It was said to expire July 12th, 2005, very
5 recently. And now it is going to expire -- it is not
6 going to expire until July 12th, 2006. Can you
7 explain that?

8 A. I know nothing about it.

9 Q. Who designed the website, vancoscoydiamondmine.com?

10 A. Certified Solutions in Wilkes-Barre,
11 Pennsylvania.

12 Q. Who hired the designers?

13 A. I don't know that.

14 Q. Did you hire the designers?

15 A. I hired a company, Certified Solutions. Who
16 designs in the company and all that, I don't know that.

17 Q. Did you hire that company to design your website?

18 A. Yes.

19 Q. Did you pay them?

20 A. Yes, I did.

21 Q. Do you know who currently is hosting the website?

22 A. Right now, as you said, renewal and all that

23 stuff, I have no idea. No idea. Vancoscoydiamondmine.com?

24 Q. Well, yeah.

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1 A. I have no idea, no idea.

2 MR. QUINN: Wait a minute. You are asking
3 about the current?4 MR. PETOCK: Right now I'm asking about the
5 current website, yes.6 MR. QUINN: And he answered about the former
7 I think.

8 BY MR. PETOCK:

9 Q. I'm sorry. I'm talking about the former, yes.

10 That's all we talked about so far is

11 vancoscoydiamondmine.com, the former.

12 A. Who has that now? I have no idea, no idea.

13 Q. Did you approve the design of
14 vancoscoydiamondmine.com?

15 A. The design? It's a web name.

16 Q. Did you design -- did you approve the design of
17 the layout of the individual web pages of
18 vancoscoydiamondmine.com?19 A. Of Van Scoy Diamond Mine of Delaware,
20 Incorporated, yes, our website, yes.21 MR. F. PETOCK: That's a different question.
22 He asked Van Scoy Diamond Mine.23 THE WITNESS: Then I'm confused. I don't
24 understand the question.

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1 MR. PETOCK: I'll repeat the question.

2 MR. QUINN: I'm going to instruct the
3 witness. Listen very carefully to Mr. Petock's
4 questions. Because there is a close, there is some
5 similarity and some of the words are identical as
6 between, if I may characterize it, as the prior website
7 address and domain name and the current one. And so make
8 it, be very careful that you listen to him carefully so
9 that you know exactly what he's talking about so that you
10 can give an accurate answer.

11 THE WITNESS: Okay.

12 BY MR. PETOCK:

13 Q. Did you approve the design of the website that
14 was hosted at vancoscoydiamondmine.com?

15 A. Yes.

16 Q. Have you stopped using the website
17 vancoscoydiamondmine.com?

18 A. Yes.

19 Q. When did you stop using it?

20 A. Exact, I'm not sure. It was shortly thereafter.

21 We had, certainly, the notice of the lawsuit and all
22 that. And that's when pretty much, until we get this
23 thing squared away and find out where we are at, put a
24 hold to that particular website, absolutely.

1 Q. Would you be willing to assign the domain name

2 vancoscoydiamondmine to Wayne?

3 A. I don't know.

4 Q. And you have a new website, Van Scoy Diamond Mine
5 of Delaware; is that correct -- or
6 vancoscoydiamondsofdelaware? I'm sorry.

7 A. Yes.

8 Q. Besides the domain names, are there any
9 differences between the actual substance of the websites
10 between the website vancoscoydiamondmine.com and
11 vancoscoydiamondsofdelaware.com?

12 A. No.

13 Q. They are exactly the same in substance?

14 A. Yes.

15 Q. I want you to look at Page 3 of
16 vancoscoydiamondsofdelaware. It's Exhibit Number 12. Are
17 you there?

18 A. Do you have directions?

19 Q. It's the third page. On that web page, that is a
20 picture of a page on your website, correct?

21 A. That is correct, yes.

22 Q. There is a picture of your store; is that
23 correct?

24 A. Yes.

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1 Q. And your store has a sign on it that says Van
2 Scoy Diamond Mine; is that correct?

3 A. That is correct.

4 Q. Does this picture show the sign that was given to
5 you by your father?

6 A. It certainly does.

7 Q. Could you tell me what that sign is?

8 A. Yes. Right in the bottom it says "Diamond Mine."
9 That's the sign my father gave to me.

10 Q. At the top of the window; is that correct?

11 A. Correct.

12 Q. So did he give you the "Van Scoy" on the top?

13 A. That was actually there, my landlord actually.

14 Q. That was already there?

15 A. Yes.

16 Q. Earlier I asked you what remnants of your
17 father's store were left there. And you didn't mention
18 that. Could you explain to me why you didn't mention
19 that?

20 A. Well, you said inside the store.

21 Q. I don't think I did.

22 A. I'm pretty sure you said inside the store.

23 Q. Okay. What remnants of your father's store, were
24 there any remnants of your father's store left on the

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1 store or outside the store?
 2 A. The only thing that was left was actually on the
 3 top. Just the "Van Scoy" was there. And, actually, the
 4 "Diamond Mine" part down here is actually inside the
 5 premises. And that's actually the sign that we took out
 6 of my father's warehouse, he actually helped me load up
 7 in the U-Haul truck.

8 Q. So your father did not give you a sign that said
 9 Van Scoy Diamond Mine; he gave you a sign that said
 10 Diamond Mine.

11 A. Diamond Mine, right. Well, Van Scoy, he said
 12 part of the sign is there. He says, here, just take the
 13 bottom part. This is what you need, Van Scoy Diamond
 14 Mine. He left the sign there. The top part he left
 15 there.

16 Q. And the landlord had not taken the sign down?

17 A. No, he did not.

18 Q. How big is the safe in your store?

19 A. Exact, I'm not sure.

20 Q. Is it a walk-in safe?

21 A. No.

22 Q. What is the sign that the Diamond Mine is made
 23 out of?

24 A. Fiberglass, fiberglass and metal, aluminum.

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1 Q. And your website -- actually, referring to
 2 Exhibit 11, it's going to be Docket Number 312, is that
 3 the same picture that we were just looking at?

4 A. Yeah.

5 Q. And this is a page from your website that was at
 6 vancoscoydiamondmine.com?

7 A. Say that again. I'm sorry.

8 Q. This page that we are looking at is a printout of
 9 one of the pages that was at your website
 10 vancoscoydiamondmine.com?

11 A. Yes.

12 MR. F. PETOCK: Clarify this page.

13 MR. PETOCK: The page that we are now
 14 looking at.

15 MR. F. PETOCK: Is what page?

16 BY MR. PETOCK:

17 Q. It's identified by Bates Stamp Number 00312; is
 18 that correct? It says it on the bottom.

19 A. Yes.

20 Q. This also shews a picture of your store with the
 21 sign Van Scoy Diamond Mine, correct?

22 A. That is correct, yes.

23 Q. Your website, both of them, both Exhibit Number
 24 11 and Exhibit Number 12, refer to your jewelry store as

1 Van Scoy Diamond Mine throughout the text of the website;
 2 is that correct?
 3 A. Van Scoy Diamond Mine of Delaware, Incorporated,
 4 yes.
 5 Q. It doesn't always say Van Scoy Diamond Mine of
 6 Delaware, Incorporated, correct, in the text; sometimes
 7 it says Van Scoy Diamond Mine?

8 A. It may as well. I'm not sure.

9 Q. The same page we were just looking at that's
 10 stamped Bates stamped 00312 of Exhibit 11, right there
 11 right below about, it says "Van Scoy Diamond Mine is a
 12 direct," and then it's cut off; is that correct?

13 A. Yeah, that's correct. Sure.

14 Q. Go back to Page Number 3 of Exhibit Number 12.
 15 It says in the same location, "Van Scoy Diamond Mine is a
 16 direct diamond importer of the finest quality diamonds."
 17 Is that what that says?

18 A. That is correct.

19 Q. So I'm going to ask you again. Do the websites
 20 that are shown in both Exhibit 11 and 12 refer to your
 21 jewelry store as Van Scoy Diamond Mine and not Van Scoy
 22 Diamonds Mine of Delaware, Incorporated, or anything?

23 A. I'm not sure of the question. I don't understand
 24 it.

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1 Q. Okay. Do the websites, does your website hosted,
 2 that was hosted at vancoscoydiamondmine.com refer to your
 3 jewelry store as Van Scoy Diamond Mine?

4 A. Yes.

5 Q. Does your website at
 6 vancoscoydiamondsofdelaware.com refer to your jewelry store
 7 as Van Scoy Diamond Mine?

8 A. Yes, it does.

9 Q. How many hits did your website hosted at
 10 vancoscoydiamondmine.com get per month?

11 A. I have no idea.

12 Q. Is it the same answer for
 13 vancoscoydiamondsofdelaware?

14 A. Yeah. I don't know that.

15 Q. Did you offer product for sale through your
 16 current website, vancoscoydiamondsofdelaware.com?

17 A. It is available. But nothing was sold. Sure.

18 Q. Did you offer products for sale through your
 19 website hosted at vancoscoydiamondmine.com?

20 A. It's the same website.

21 Q. How is it that you offer products for sale?

22 A. A click on the image that if they see something,
 23 they can enlarge it. And if they want to get more
 24 information about it, you get more information about it,

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- 1 click on it or certainly E-mail us if they are interested
 2 in purchasing or call us.
 3 Q. Have you made any sales through your website?
 4 A. One for a mounting. One.
 5 Q. Do you know where that customer was located?
 6 A. Actually, it was from a gentleman that I know
 7 from DOD training. He lives in North Carolina. He
 8 contacted his son. He had his son go on the website,
 9 find a mounting that he liked. He contacted me and I
 10 sent the mounting down to his son.
 11 Q. Do you have a picture of all your products on
 12 your website?
 13 A. No.
 14 Q. On your current website,
 15 vanscodydiamondsofdelaware, there are pictures of at least
 16 716 of your products. Does that sound about right?
 17 A. Products that are available, sure.
 18 Q. Did you ever make any sales through your website
 19 at vanscodydiamondmine.com?
 20 A. No. Actually, that was, it was a mounting. That
 21 was it.
 22 Q. That was the sale that you made?
 23 A. The guy, he said, tell him to go to the website
 24 and take a look at the mounting.

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- 1 Q. So you made your sale through the website,
 2 vanscodydiamondmine.com?
 3 A. He had a style what he was looking for. And I
 4 told him there was a picture on the website. If you go
 5 to that picture, he took a look at it. And he said I'm
 6 going to use your best judgment. Send me what you have
 7 that looks similar to what he's looking for.
 8 Q. But that sale was made through
 9 vanscodydiamondmine.com?
 10 A. I can't say that, no. Directly through that, no,
 11 no.
 12 Q. I mean, when was this purchase made?
 13 A. Oh, God. Probably 10 months ago, 11 months ago
 14 at least.
 15 Q. So at that time vanscodydiamondsofdelaware didn't
 16 exist; it was vanscodydiamondmine.com, correct?
 17 A. I believe so.
 18 Q. Is Newark, Delaware, a different geographic
 19 market for diamonds than Wilkes-Barre, PA?
 20 A. I don't understand that question. What do you
 21 mean by that?
 22 Q. How would you define your sales market for your
 23 business?
 24 A. Very competitive.

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- 1 Q. How far does it extend geographically?
 2 A. Tri-state area.
 3 Q. What states are you talking about in the
 4 tri-state area?
 5 A. Jersey, Maryland, Pennsylvania.
 6 Q. The entire states?
 7 A. No, the tri-state area. Do you know what
 8 tri-state is? Just the lower southern part of Jersey,
 9 the tri-state area.
 10 Q. And how would you define that, as your market?
 11 Could you define that as your market?
 12 A. Not necessarily, to be honest with you, no. It's
 13 more just the Wilmington area market really.
 14 Q. In your experience, how far does a customer
 15 travel from their home to purchase a diamond usually?
 16 A. I can't answer that question. I have no idea.
 17 Q. Do you have a computer at your store?
 18 A. Yes.
 19 Q. What records are kept on your computers?
 20 A. What's on there? Calendars. What else is on
 21 there? There is internet access on there, accounts
 22 payable, excuse me, accounts payable. That's as far as I
 23 know. I do the bench work.
 24 Q. Do you have more than one computer?

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- 1 A. Yeah, there is.
 2 Q. How many?
 3 A. Two.
 4 Q. Are the same things kept on both computers?
 5 A. No. Both of them have internet access. One has
 6 accounts payable. And the other one is just an internet
 7 access and printing things or copying something, stuff
 8 like that.
 9 Q. Where is the computer located that you keep your
 10 invoices in and things other than the internet access?
 11 A. That's the other computer at the store.
 12 Q. Where is it located in the store?
 13 A. In the back at my wife's a desk.
 14 Q. What were your gross sales last year?
 15 A. I have no idea.
 16 Q. Approximately.
 17 A. I have no idea.
 18 Q. What were your gross profits last year?
 19 A. I have no idea.
 20 Q. Approximately.
 21 A. I have no idea.
 22 Q. Can you tell me how much you made last year?
 23 A. Really, I have no idea. I really don't. I have
 24 no idea.

39 (Pages 150 to 153)

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1 Q. How do you record sales?
 2 A. I don't understand the question.
 3 Q. How do you record how many sales you make? Your
 4 sales, how do you record that? How do you write that
 5 down? How do you keep a record of it?

6 MR. QUINN: How many questions is that?

7 MR. PETOCK: They are all the same, Charlie.

8 MR. QUINN: Then ask them one at a time,
 9 please.

10 BY MR. PETOCK:

11 Q. How do you record your sales?
 12 A. As they come in, account cards.
 13 Q. Explain it to me, please.

14 A. Someone, they buy something. You have a receipt.
 15 You come in the back. They put it in the box. At the
 16 end of day, you come out. You take the receipt out. You
 17 mark down the deposit, what it is. If it's a sale, it's
 18 a sale. The girl takes the receipt, brings it over here.
 19 Her name is John Doe. Okay. This is what she has. And
 20 it's on an account card and you put it in the file.

21 Q. At some point, do you have one master list with
 22 all your sales?

23 A. No. It's something I don't do. The girls do. I
 24 don't know.

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1 Q. Who in the store records your sales? Just name
 2 every person that records your sales.

3 A. The names I gave to you before really.

4 Q. Give them to me again, please.

5 A. Sands Shoemaker, Karen Vale, Annette D'Angelo,
 6 Lori McMichael and Megan Rump.

7 Q. And then at some point -- they record the sales.
 8 How do they record the sales? By writing out a sales
 9 receipt; is that how they record the sales?

10 A. No. They take the sales receipt that comes in.
 11 And you have an account card. And you take the name and
 12 you write down the name, the street address. All the
 13 information they put on a card and that goes in an
 14 alphabetical box. And that's how you keep your accounts.

15 Q. And, at some point, does that box get transferred
 16 to someone else?

17 A. No. It stays there for the year. People come
 18 in. They make payments, what they bought. You don't
 19 know.

20 Q. Do all those sales eventually get added up by
 21 someone?

22 A. By the end -- when you do your printouts on your
 23 computer for the end of the year, sure. You have your
 24 deposits and what you put in and all your expenses and

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1 Q. Who does do it?
 2 A. My staff actually.
 3 Q. Is there one person in charge of doing that?
 4 A. No, not really.
 5 Q. Do you have an accountant?
 6 A. I do.

7 Q. Would your accountant know what your sales were
 8 for last year or the year before or the year before that?
 9 A. I would hope so. Sure.

10 Q. What is the name of your accountant?
 11 A. Jim Bellinger.

12 Q. How do you record what your expenses are?
 13 A. That's why I have an accountant.

14 Q. How does your accountant find out what your
 15 expenses were?

16 A. That's something you would have to ask my
 17 accountant to be honest. I don't know. I really don't
 18 know. Your accounts payable, your expenses, all that, it
 19 all spits right out. That's his department.

20 Q. So you don't keep track of what your expenses
 21 are?

22 A. No, I don't, to be honest with you.

23 Q. Do you use E-mail to communicate?

24 A. Very little. Me personally, very little.

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1 all that.

2 Q. You didn't mention anything about anything
 3 getting put in the computer.

4 A. Well, when you are talking about accounts
 5 payable, when you got accounts payable, you have your
 6 total amounts of your income, what you took in, what your
 7 expenses are and what your actual expenses were. It
 8 breaks your expenses down and all that, your rent and
 9 your payable and all that stuff. It, basically, just
 10 breaks everything down.

11 Q. So all of that is inputted into your computer?

12 A. Correct.

13 Q. So that's all information that is in your
 14 computer?

15 A. Yeah, I mean, I guess. That's where my
 16 accountant comes in. I would have to assume, yes.

17 Q. Who puts it in the computer?

18 A. Actually, that's my wife.

19 Q. How come you didn't tell me this when I first
 20 asked you?

21 MR. QUINN: Objection. I don't think that's
 22 a fair characterization of what was asked before.

23 BY MR. PETOCK:

24 Q. So when does your wife input this information

40 (Pages 154 to 157)

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1 into the computer?
 2 A. Almost on a daily basis I would say.
 3 Q. Would she know what your gross profits were for
 4 last year?
 5 A. I don't know. I would doubt it. But I can't
 6 answer for her.
 7 Q. Did your father ever have a situation where one
 8 of his licensees stopped paying royalties to him?
 9 A. I have no idea. I do not know.
 10 Q. Does Mark Mower currently operate a jewelry store
 11 in Allentown?
 12 A. My recollection, I believe he does, yes.
 13 Q. Do you know what name it is?
 14 A. I think it's actually three different – it's
 15 three guys that are joined together. But it's Van Scoy
 16 something and something.
 17 Q. Do you know if he has any other stores?
 18 A. I don't know. I never really discussed with him
 19 about anything else.
 20 Q. Mark Mower, at one point, operated a Van Scoy
 21 Diamond Mine; is that correct?
 22 A. I believe so, yes.
 23 Q. At some point it went out of business; is that
 24 correct?

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1 A. No, I did not.
 2 MR. PETOCK: Let's take a break, please.
 3 VIDEO SPECIALIST: Off the record at 2:48.
 4 (Thereupon, a short recess was had.)
 5 VIDEO SPECIALIST: Back on the record at
 6 2:57.
 7 MR. QUINN: I want to make it clear that,
 8 when this suit started and the issue came up about the
 9 retention of electronic communications related to the
 10 case, that Mr. Van Scoy was instructed to retain anything
 11 relating to the case that was in electronic form, whether
 12 it be E-mail or otherwise, that he had or generated
 13 during the course of the suit.
 14 Now, what he uses or did use or does use his
 15 E-mail or doesn't use his E-mail for is another issue.
 16 But those were the instructions that he was given.
 17 THE WITNESS: Yeah, anything regardless to
 18 the case is certainly anything -- and we don't use E-mail
 19 for that. We have everything that was mailed to us from
 20 the beginning to where it stands right now. But anything
 21 via E-mail regarding the trademark or anything about the
 22 case itself, there is nothing there. If there is, there
 23 is absolutely, it's still available I'm sure.
 24 Again, everything was done through mail.

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1 A. Not that I'm aware of.
 2 Q. Are you aware, at any time, of Mark Mower
 3 operating a jewelry store by the name of Avalon Jewelers?
 4 A. No. Actually, I'm not really aware of that.
 5 Q. When you say you are not really aware of that,
 6 could you tell me what that means?
 7 A. I don't know.
 8 Q. Do you retain the E-mails that you send or do you
 9 delete them?
 10 A. I don't do that myself. So I can't answer that.
 11 I don't know.
 12 Q. Who does do that?
 13 A. Usually Lori McMichael.
 14 Q. What is Lori McMichael's job duty in that regard?
 15 A. Change the garbage, wipe the windows, sell a
 16 ring, buff a ring, run to the post office, check E-mails,
 17 copies. We're all, we just do what has to be done.
 18 There is no set, you are this, you are that, you are
 19 that, you are that, you are that. It's a team. We work
 20 as a team.
 21 Q. Have you told Lori McMichael that she has a duty
 22 not to erase E-mails related to this case?
 23 A. No. To be honest with you, no.
 24 Q. Did you know you had a duty to tell her that?

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1 E-mail is certainly with the business wise. Do you have
 2 a ruby ring for X amount of dollars and all that? Sure.
 3 That's a different thing. That's not regarding the case
 4 itself.
 5 BY MR. PETOCK:
 6 Q. Did you talk about the substance of your
 7 deposition testimony during the break with your lawyer?
 8 MR. QUINN: I refreshed his recollection.
 9 MR. PETOCK: I didn't ask you, Charlie.
 10 MR. QUINN: I'm telling you what was
 11 discussed during the break. I refreshed his recollection
 12 as to the instructions that were given.
 13 MR. PETOCK: But I didn't ask you.
 14 MR. QUINN: I'm putting it on the record
 15 whether you asked me or not. It's on the record.
 16 MR. PETOCK: You put that on the record
 17 before I get the answer from him?
 18 MR. QUINN: I just did.
 19 MR. F. PETOCK: Talking objection when there
 20 is a question pending.
 21 MR. QUINN: There was no question pending.
 22 MR. F. PETOCK: There certainly was.
 23 MR. PETOCK: You read the case that we gave
 24 you. That's exactly what I'm allowed to do, ask that

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1 question.

2 MR. QUINN: There was no question asked when
 3 I put that on the record. That's why I said to the lady
 4 I wanted to put something on the record when she started.

5 MR. F. PETOCK: After you finished your
 6 statement he asked the question. The witness was asked a
 7 question and then you interjected. And that's the
 8 question that was asked.

9 MR. QUINN: The record will show what the
 10 record shows. It is what it is.

11 BY MR. PETOCK:

12 Q. How far back --

13 MR. F. PETOCK: You didn't get an answer to
 14 that question.

15 BY MR. PETOCK:

16 Q. Well, did you talk about the substance of your
 17 deposition testimony during the break?

18 A. He informed me on something, yes.

19 Q. About what areas of your testimony already given,
 20 were expected to be given did you consult with Mr. Quinn?

21 A. He was just saying with the E-mails, what more
 22 defined of what we meant, if anything, is revolving
 23 around the trademark issue or about this case in via
 24 E-mails is what he's saying, if that was deleted or not

1 Q. How far do the records go back that you keep on
 2 your computer?

3 A. That I can't -- I can't answer that. I can't
 4 answer that. I don't know.

5 Q. Who could answer that?

6 A. Probably my wife.

7 Q. How much do your employees get paid per year?

8 A. I don't know that.

9 Q. Approximately how much?

10 A. I have no idea.

11 Q. Do some get paid more than others or do they all
 12 get paid the same amount?

13 A. I have no idea.

14 Q. Do you know if they make more than \$50,000 a
 15 year?

16 A. I don't know that.

17 Q. Do you have a blue safe in your store?

18 A. Actually, yeah. That's from the landlord. Yes.

19 Q. Was it, at one point, your father's safe?

20 A. I don't know that to be honest with you. When we
 21 opened up and the safe was in there. And my landlord
 22 said, if you can get it open, you can use it. That's his
 23 exact words. He did.

24 Q. Were you able to get it open?

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1 or anything. And I said I don't do any E-mailing of any
 2 sort certainly with that about this case or the
 3 trademark. Everything is by paper mailed via mail to us.
 4 I have a stack that high of everything that was mailed to
 5 us through this whole thing.

6 So that's what he was correcting me about.
 7 He said if there is a ring and it's a ruby and all that
 8 other stuff, that has nothing to do with the case itself
 9 or the trademark.

10 Q. You just mentioned a stack of papers --

11 A. From what you --

12 Q. -- concerning the case. Have they been produced
 13 to us?

14 A. It's what you have produced to us and what we
 15 have been sending back and forth to you. It's
 16 accumulating as we go. That's what I'm talking about as
 17 a stack of papers.

18 Q. Do you want to change your deposition testimony
 19 as a result of anything that Mr. Quinn said to you during
 20 the break?

21 A. No.

22 Q. How far do the records that you keep go back, the
 23 tangible records, not the ones on your computer?

24 A. From 1994.

1 A. Actually, yeah. I had a guy open it up, yeah.
 2 There is a tan safe that my father helped me move down.

3 Q. If you were a betting man, would you bet that

4 that safe was probably your father's?

5 MR. QUINN: Objection to the form of the
 6 question.

7 BY MR. PETOCK:

8 Q. Do you think that safe was probably your father's
 9 safe?

10 A. I have no idea. I really don't.

11 Q. Did you ever see that blue safe in the store when
 12 you worked in your father's Delaware store in Churchmans
 13 Plaza?

14 A. To be honest, he had a lot of safes. Blue safes,
 15 I really, I don't know that. All I know is what he gave
 16 me to bring down to the store.

17 Q. You understand now that you have a duty to
 18 preserve evidence, correct?

19 A. Absolutely, sure.

20 Q. Related to the case.

21 A. Correct.

22 MR. PETOCK: I would like to move the
 23 following three exhibits into evidence: The tax returns
 24 that were produced for 2002, tax returns produced for

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1 2003.

2 MR. QUINN: '02, '03, '04?

3 MR. PETOCK: Yeah.

4 (Van Scoy Deposition Exhibit Nos. 13, 14 and
5 15, Tax Returns, were marked for identification.)6 VIDEO SPECIALIST: This ends Tape Number 4
7 of the video deposition of Kurt Van Scoy. The time is
8 3:06.

9 (Thereupon, a short recess was had.)

10 VIDEO SPECIALIST: This is Tape Number 5 of
11 the video deposition of Kurt Van Scoy. The time is 3:11.

12 BY MR. PETOCK:

13 Q. Do you know what a trade name is, Kurt?

14 A. I'm not sure I understand the question.

15 Q. Do you know what the word - do you know what the
16 phraseology "trade name" is? Do you know what a trade
17 name is?

18 A. A trademark name?

19 Q. Is there a difference between a trade name and a
20 trademark?

21 A. I don't know.

22 Q. Okay. That's fine. Did your company help
23 finance Tovon or your brother Tommy in any way?

24 A. No.

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1 Q. Did your company cosign on any loans or anything?

2 A. No.

3 Q. Did you help him in any way?

4 A. No.

5 Q. Your company?

6 A. Nothing, no.

7 Q. I'm going to show you Exhibit 13, 14 and 15.

8 Could you tell me what they are?

9 A. That's 1120-S Forms, income tax forms for
10 S Corporation, 2002, 2003 and 2004.

11 MR. F. PETOCK: For what corporation?

12 THE WITNESS: Van Scoy Diamond Mine of
13 Delaware, Incorporated.

14 BY MR. PETOCK:

15 Q. Are those the documents that you produced in
16 response to your Notice of Deposition?

17 A. Yes.

18 MR. QUINN: Among others. They are not all,
19 correct?

20 MR. PETOCK: Yes, that's correct.

21 BY MR. PETOCK:

22 Q. Those are the documents that you produced in
23 response to our request for advertising expenditures from
24 the year you opened your store until the present; is that

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1 correct?

2 A. That's correct.

3 Q. And those are all the documents you produced with
4 respect to that question?

5 A. Yes.

6 MR. PETOCK: I'm going to put on the record
7 that this deposition is left open because all of the
8 documents in respect to that request have not been
9 produced. But other than that, I have nothing more for
10 today.

11 MR. QUINN: Okay. I have nothing.

12 VIDEO SPECIALIST: This concludes the video
13 deposition of --14 MR. F. PETOCK: One more thing. You reserve
15 the right to read and sign the deposition? Does your
16 client reserve that right?17 MR. QUINN: I assume you want to do that, do
18 you not, read and sign the deposition? You want the
19 opportunity to read your transcript?

20 THE WITNESS: Sure.

21 MR. F. PETOCK: I want the court reporter to
22 keep the transcript. And the court reporter, for
23 convenience, can send the signature sheet and errata
24 sheet to you. But the court reporter should retain the

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1 original of the transcript.

2 VIDEO SPECIALIST: This concludes the video
3 deposition of Kurt Van Scoy. The time is 3:14.
4 (Thereupon, the deposition concluded at 3:14
5 p.m.)6 -----
7
8 INDEX TO TESTIMONY
9

10 KURT VAN SCOY PAGE

11 Examination by Mr. Petock 3

12 -----

13 INDEX TO EXHIBITS

14 VAN SCOY DEPOSITION EXHIBIT NO. PAGE

15 1. Meeting Minutes of August 22, 1996 6:11

16 2. Cease and Desist Letter 12:24

17 3. Letter to Fox Rothschild Dated February 22,
18 2005 15:13

19 4. UPS Invoices 21:24

20 5. Warranty 76:15

21 6. Valentine's Ad 78:16

22 7. Sales Receipts 81:4

23 8. Notice of Deposition Resetting Date 92:22

24 9. Bankruptcy Petition 121:22

10. Order Approving Agreement in Settlement
11 of Adversary Proceedings and Contested Matters 124:18

12 11 and 12, Website Pages 139:5

13, 14 and 15, Tax Returns 166:4

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1
2
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5
6 **REPLACE THIS PAGE**
7
8 **WITH THE ERRATA SHEET**
9
10 **AFTER IT HAS BEEN**
11
12 **COMPLETED AND SIGNED**
13
14 **BY THE DEPONENT.**
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State of Delaware)
)
New Castle County)

CERTIFICATE OF REPORTER

I, Anne L. Adams, Registered Professional Reporter and Notary Public, do hereby certify that there came before me on the 26th day of July, 2005, the deponent herein, KURT VAN SCOY, who was duly sworn by me and thereafter examined by counsel for the respective parties; that the questions asked of said deponent and the answers given were taken down by me in Stenotype notes and thereafter transcribed into typewriting under my direction.

I further certify that the foregoing is a true and correct transcript of the testimony given at said examination of said witness.

I further certify that I am not counsel, attorney, or relative of either party, or otherwise interested in the event of this suit.

Anne L. Adams
Certification No. 105-RPR
(Expires January 31, 2008)

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